

## MODEL SERVICES AGREEMENT COMBINED SCHEDULES



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## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 2.1**

#### **SERVICES DESCRIPTION**

## Services Description

### 1 DEFINITIONS

- 1.1 In this Schedule, the definitions at Schedule 1 of the Model Services Contract shall apply.

### 2 INTRODUCTION

- 2.1 To support the provision of Universal Credit full service (UC full service), the Authority requires a Supplier to provide the Service(s) of an Appointment Booking System for the creation and management of claimants' appointments with DWP staff.
- 2.2 The Appointment Booking System will host staff locations, availability and skill sets which define the types of appointments the DWP staff are trained to handle. This information will be used to find a DWP member of staff, within a JobCentre, that is available and trained to handle the appointment.
- 2.3 DWP staff will create and manage appointments through UC full service, and will utilise the Appointment Booking System's Application Programming Interfaces (APIs) to create and manage appointments. In late 2017/early 2018 claimants will be provided with the ability to book and manage their own appointments online through UC full service.
- 2.4 The Appointment Booking System will be integrated into UC full service and its platforms. The entire booking process will be performed via the UC full service user interface. Universal Credit will utilise the Appointment Booking System APIs to create and manage appointments. Administration and Management functions are not expected to be integrated into UC full service.
- 2.5 In 2015 it was established that DWP required a cloud-based appointment booking service for Digital UC Offices. The service needed to meet the immediate need to replace a clerical system, which was not efficient, suitable or scalable to meet the needs of UC. Part of the DWP 2020 vision includes changing the way customers and claimants access our services, in order to enable them to access service in ways and at times that are convenient for them. In line with this strategy, the Appointment Booking System will be supporting the UC full service to allow claimants to access and manage their online claim at any time.
- 2.6 The Appointment Booking System is business critical to the success of UC because extensive user research has established a key user need is 'a single source of truth' and the removal of the requirement to double key. To that end, it is essential to ensure the user experience is situated entirely within UC full service. Additionally the service should lead to faster and more accurate appointment booking, reduction in failures to attend (FTAs) and improved claimant experience.
- 2.7 This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

### 3 SERVICES DESCRIPTION

- 3.1 The Authority requires a cloud-based, commercial 'off-the-shelf' Appointment Booking System. Due to the timescales and need for UC full service to utilise the Appointment Booking System's APIs, the system must meet the stated requirements with minimal additional development work and customisation. The Department does not require a booking system to be built and custom-designed.
- 3.2 The Authority requires a 24 hours a day, 7 days a week, 365 days a year system with a service level agreement (SLA) that provides 99.90 percent availability, as the Appointment Booking System will be supporting the UC full service which allows claimants to access their online claim at any time.
- 3.3 There will also be a requirement for data to be migrated from DWP's current Appointment Booking System to the new Appointment Booking System. As a minimum, this will include all current and future appointments, plus related data (e.g. DWP staff availability, JobCentre information, appointment types etc.).
- 3.4 Specific Implementation, Operational, Security and Other Authority Requirements are contained within the relevant schedules.
- 3.5 There are currently around 750 JobCentres across the UK and Northern Ireland, with around 23,000 DWP staff in total supporting claimants. Each member of DWP staff who supports claimants will have a calendar in the Appointment Booking System. A JobCentre can have up to 120 Work Coaches. Work Coaches all require diaries.
- 3.6 For the Appointment Booking System, DWP will require subscription licences for approximately 23,000 users per annum.
- 3.7 Within the 23,000 per annum figure, there are 3 types of user:

**Primary user** - approximately 11,000 work coaches (User Role) who will have calendars and will access the service via UC full service.

**Light user** - approximately 5,000 service centre users who will not have calendars and will only access the service via UC full service. They will be very light users once self-service is in operation.

**Super user** - approximately 7,000 administrative users (managers, reception etc.) who will not have a calendar, but will be using the Appointment Booking System UI directly and will therefore need to login directly.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 2.2**

#### **PERFORMANCE LEVELS**

## Performance Levels

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Available”</b>	has the meaning given in Paragraph 1.2 of Part II of Annex 1;
<b>“End User”</b>	any person authorised by the Authority to use the IT Environment and/or the Services;
<b>“Help Desk”</b>	the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
<b>“Non-Available”</b>	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
<b>“Performance Monitoring Report”</b>	has the meaning given in Paragraph 1.1(a) of Part B;
<b>“Performance Review Meeting”</b>	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Paragraph 1.5 of Part B;
<b>“Repeat KPI Failure”</b>	has the meaning given in Paragraph 3.1 of Part A;
<b>“Satisfaction Survey”</b>	has the meaning given in Paragraph 5.1 of Part II of Annex 1;
<b>“Service Availability”</b>	has the meaning given in Paragraph 2 of Part II of Annex 1
<b>“Service Downtime”</b>	any period of time during which any of the Services are not Available; and
<b>“System Response Time”</b>	has the meaning given in Paragraph 2.1 of Part II of Annex 1.

## PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

### 1 PERFORMANCE INDICATORS

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

### 2 SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.

### 3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

#### Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “Repeat KPI Failure”.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

**SP** = the number of Service Points that shall accrue for the Repeat KPI Failure; and

**P** = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

**Worked example based on the following Service Points regime for Service Availability:**

Service Availability Severity Levels	Service Points
Target Performance Level: 99.90%	0
Minor KPI Failure: 99.00% - 99.89%	1
Serious KPI Failure: 98.0% - 98.99%	2
Severe KPI Failure: 97.0% - 97.99%	3
KPI Service Threshold: below 97%	4

**Example 1:**

*If the Supplier achieves Service Availability of 99.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 97.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e.  $SP = 3 \times 2$ ). If in the next Measurement Period it achieves Service Availability of 97.5%, the Supplier will again incur 6 Service Points.*

**Example 2:**

*If the Supplier achieves Service Availability of 97.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 99.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e.  $SP = 1 \times 2$ ). If in the next Measurement Period it achieves Service Availability of 97.5%, the Supplier will incur 6 Service Points.*

**Related KPI Failures**

- 3.3 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.



#### **4 PERMITTED MAINTENANCE**

- 4.1 The Supplier shall be allowed to book a maximum of 4 hours Service Downtime for Permitted Maintenance in any one Service Period. This shall take place on Sundays wherever possible, on an agreed basis between the Authority and Supplier, and will represent the “Maintenance Schedule” referred to in Clauses 9.4, 9.5 and 9.6.

#### **5 SERVICE CREDITS**

- 5.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 5.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

## PART B: PERFORMANCE MONITORING

### 1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within 5 Working Days of the end of each Service Period, the Supplier shall provide:

- (a) a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”); and
- (b) a report to the Authority’s senior responsible officer which summarises the Supplier’s performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the “**Balanced Scorecard Report**”).

#### **Performance Monitoring Report**

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

#### **Information in respect of the Service Period just ended**

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
  - (i) whether or not a Rectification Plan has been agreed; and
  - (ii) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

- (j) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the BCDR Plan;
- (k) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- (l) such other details as the Authority may reasonably require from time to time; and

#### **Information in respect of previous Service Periods**

- (m) a rolling total of the number of Performance Failures that have occurred over the past six Service Periods;
- (n) the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;
- (o) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the BCDR Plan; and

#### **Information in respect of the next Quarter**

- (p) any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter.

#### **Balanced Scorecard Report**

- 1.3 The Balanced Scorecard Report shall be presented in the form of a dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:
  - (a) financial indicators;
  - (b) the Target Performance Levels achieved;
  - (c) behavioural indicators;
  - (d) performance against its obligation to pay its Sub-contractors within 30 days of receipt of an undisputed invoice;
  - (e) Milestone trend chart, showing performance of the overall programme; and
  - (f) sustainability and energy efficiency indicators, for example energy consumption and recycling performance.
- 1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5.
- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):

- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
  - (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
  - (c) be attended by the Supplier Representative and the Authority Representative.
- 1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

## **2 PERFORMANCE RECORDS**

- 2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

## **3 PERFORMANCE VERIFICATION**

The Authority reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Agreement against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.

## ANNEX 1: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS

### PART I: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS TABLES

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Operational Services are set out below:

#### 1 Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI1	Service Availability	See Paragraphs 1 and 2 of Part II of this Annex	Monthly	Target Performance Level: 99.90%  Minor KPI Failure: 99.00% - 99.89%  Serious KPI Failure: 98.00% - 98.99%  Severe KPI Failure: 97.0% - 97.99%  KPI Service Threshold: below 97%	0  [1]  [2]  [3]  [4]
KPI2	Supplier System Response Times	See Paragraph 3 of Part II of this Annex	Monthly	Target Performance Levels: a) < 500ms seconds for Service API response times b) 2.5 seconds for Service's own pages  Minor KPI Failure: a) 500 to 700ms b) 2.51 to 2.70 seconds	0  [1]

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
				<p>Serious KPI Failure:</p> <p>a) 701 to 900ms</p> <p>b) 2.71 to 2.90 seconds</p> <p>Severe KPI Failure:</p> <p>a) 901 to 1000ms</p> <p>b) 2.91 to 3.00 seconds</p> <p>KPI Service Threshold:</p> <p>a) more than 1000ms</p> <p>b) more than 3.00 seconds</p>	<p>[2]</p> <p>[3]</p> <p>[4]</p>
KPI3	Fix Times	See Paragraph 5 of Part II of this Annex		<p>Target Performance Level:</p> <p>2 hours for Severity 1</p> <p>7 hours for Severity 2</p> <p>24 hours for Severity 3</p> <p>72 hours for Severity 4</p> <p>Minor KPI Failure:</p> <p>3 hours for Severity 1</p> <p>9 hours for Severity 2</p> <p>30 hours for Severity 3</p> <p>78 hours for Severity 4</p>	<p>0</p> <p>[1]</p>



No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
				Minor KPI Failure: 26 hours	[1]
				Serious KPI Failure: 28 hours	[2]
				Severe KPI Failure: 30 hours	[3]
				KPI Service Threshold: more than; 32 hours	[4]



## PART II: DEFINITIONS

### 1 AVAILABLE

1.1 The IT Environment and/or the Services shall be Available when:

- (a) End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and
- (b) the Supplier System is able to process the Authority Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 x 365 basis); and
- (c) all Performance Indicators other than Service Availability are above the KPI Service Threshold.

### 2 SERVICE AVAILABILITY

2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this Paragraph 1:

- (a) Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Clause 9.4 (*Maintenance*) shall be subtracted from the total number of hours in the relevant Service Period; and
- (b) Service Points shall accrue if:
  - (i) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
  - (ii) where maintenance undertaken by the Supplier exceeds 4 hours Service Downtime for Permitted Maintenance in any Service Period.

### 3 RESPONSE TIMES

3.1 The “**System Response Time**” is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

3.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

3.3 The Service is to have a maximum response time of 2.5 seconds for the Service's own pages 99.00% of the time, and the Service APIs are to provide response times of < 500ms 99.00% of the time. The timing is at the Supplier's platform boundaries.

#### 4 HELP DESK RESPONSE TIMES

4.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.

4.2 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Authority in accordance with the provisions of Part B of this Schedule.

#### 5 FIX TIMES

5.1 The “**Fix Time**” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and “**Resolution**” means in relation to a Service Incident either:

- (a) the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or
- (b) the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority.

5.2 Fix Times for Severity 2 Service Incidents, Severity 3 Service Incidents and Severity 4 Service Incidents shall be measured in Operational Hours.

**Worked example:** if the Operational Hours for a fault are 07:00-21:00, then the clock stops measuring Fix Time at 21:00 in the evening and restarts at 07:00 the following day).

5.3 Fix times for Severity 1 Service Incidents shall be measured 24 x 7 x 365.

5.4 The Supplier shall measure Fix Times as part of its service management responsibilities and report periodically to the Authority on Fix Times as part of the Performance Monitoring Report.

5.5 For the purposes of this Paragraph 5, the following expressions shall have the meanings set opposite them below:

<b>“Operational Hours”</b>	In relation to any Service, the hours for which that Service is to be operational as set out in Schedule 2.1 ( <i>Services Description</i> );
<b>“Service Incident”</b>	a reported occurrence of a failure to deliver any part of the Services in accordance with the Authority Requirements or the Performance Indicators;
<b>“Severity 1 Service Incident: Major”</b>	A major disruption to the system operability or functionality, server crash or total system failure affecting all users, a business critical function, all core components and/or being public facing. This could represent the loss of ability to run business critical reports, functions or processes, or an agent or claimant being unable to create / update an appointment due to the service being unavailable.
<b>“Severity 2 Service Incident: Critical”</b>	A severe disruption to the system operability or functionality affecting multiple users, singular core components or affecting public facing systems. Whilst being unable to carry out critical business functions, it may not make the whole system unusable.
<b>“Severity 3 Service Incident: Functional”</b>	A disruption in system operability or functionality that causes some business impact and disruption but does not impact the entire system. This could include multiple users being unable to access the application, access data records or run reports.
<b>“Severity 4 Service Incident: Routine”</b>	Routine programming/configuration issues relating to functionality or operability and/or routine issues, errors or bugs affecting the system. This could also include changes to the system which have no impact on usability and cause very little business impact as a suitable work-around is in place.
<b>“Service Queries”</b>	General queries to the Help Desk which are not deemed as being an Incident when raised (the status may change following further investigation). The Supplier shall respond to all Service Queries within 24 hours.

## 6 SATISFACTION SURVEYS

- 6.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:
- (a) the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or
  - (b) other suggestions for improvements to the Services.
- 6.2 The Authority shall reflect in the Balanced Scorecard Report any aspects of the Supplier’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 2.3**

#### **STANDARDS**

## Standards

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Standards Hub”</b>	the Government’s open and transparent standards adoption process as documented at <a href="http://standards.data.gov.uk/">http://standards.data.gov.uk/</a> ; and
<b>“Suggested Challenge”</b>	a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

### 2 GENERAL

- 2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Authority’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Authority’s receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

### 3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

### 4 OPEN DATA STANDARDS & STANDARDS HUB

- 4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

- 4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.
- 4.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

## **5 TECHNOLOGY ARCHITECTURE STANDARDS**

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.1 or its equivalent, then this shall be deemed acceptable.

## **6 ACCESSIBLE DIGITAL STANDARDS**

The Supplier shall comply with (or with equivalents to):

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA; and
- (b) Section 508 Standards for Electronic and Information Technology

## **7 SERVICE MANAGEMENT SOFTWARE & STANDARDS**

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- (a) ITIL v3 2011;
  - (b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";
  - (c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";
  - (d) ISO 10007 "Quality management systems - Guidelines for configuration management"; and
  - (e) BS25999-1:2006 "Code of Practice for Business Continuity Management" and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of "IT Service Continuity Strategy" or "Disaster Recovery" plans.

- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to “Bronze Level”, then this shall be deemed acceptable.

## **8 ENVIRONMENTAL STANDARDS**

- 8.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.
- 8.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).
- 8.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.
- 8.4 The Supplier shall comply with the EU Code of Conduct on Data Centres’ Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.
- 8.5 The Supplier shall comply with the Authority and HM Government’s objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document “Greening Government: ICT Strategy issue (March 2011)” at <https://www.gov.uk/government/publications/greening-government-ict-strategy>.

## **9 HARDWARE SAFETY STANDARDS**

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 60950-1:2006+A12:2011 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
  - (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN 60065:2002+A12:2011 or any subsequent replacements;
  - (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2007 or any subsequent replacements; and



- (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 41003:2009 or any subsequent replacements.

9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 2.4**

### **SECURITY MANAGEMENT**

## Security Management

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Breach of Security”</b>	<p>the occurrence of:</p> <p>(a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or</p> <p>(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement,</p> <p>in either case as more particularly set out in the Security requirements in Schedule 2.1 (Services Description) and the Baseline Security Requirements;</p>
<b>“CHECK Scheme”</b>	<p>The scheme for penetration testing of data processing systems operated by the Communications-Electronics Security Group;</p>
<b>“ISMS”</b>	<p>the information security management system and processes developed by the Supplier in accordance with Paragraph 3 as updated from time to time in accordance with this Schedule;</p>
<b>“Security Policy Framework”</b>	<p>The Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier.</p>
<b>“Security Tests”</b>	<p>tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.</p>

### 2 INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.

- 2.2 The Parties shall each appoint a member of the Programme Board to be responsible for security. The initial member of the Programme Board appointed by the Supplier for such purpose shall be the person named as such in Schedule 9.2 (*Key Personnel*) and the provisions of Clauses 14.5 and 14.6 (*Key Personnel*) shall apply in relation to such person.
- 2.3 The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.4 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.5 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.
- 2.6 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 2.7 The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.
- 2.8 The Supplier acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Supplier's ICT system. The Supplier also acknowledges the confidentiality of the Authority's Data.
- 2.9 The Supplier shall be responsible for the security of the Supplier's ICT system and shall at all times provide a level of security which;
- a) is in accordance with Good Industry Practice and Law;
  - b) complies with the Security Policy;
  - c) meets any specific security threats to the Supplier's System; and
  - d) complies with ISO/IEC27002 and ISO/IEC27001
  - e) meets the requirements of the Cyber Essentials Scheme.
- 2.10 The Supplier shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:
- a) loss of integrity of Authority Data;
  - b) loss of confidentiality of Authority Data;

- c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;
- d) unauthorised access to network elements and buildings;
- e) use of the Supplier's System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- f) loss of availability of Authority Data due to any failure or compromise of the Services; and
- g) loss of confidentiality, integrity and availability of Authority Data through Cyber/internet threats.

### 3 ISMS

- 3.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Authority for the Authority's approval in accordance with Paragraph 4.4 an ISMS (information security management system) for the purposes of this Agreement, which:
- (a) shall have been tested in accordance with Schedule 6.2 (*Testing Procedures*); and
  - (b) shall comply with the requirements of Paragraphs 3.3 to 3.5.
- 3.2 The Supplier acknowledges that the Authority places great emphasis on the reliability of the Services and confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that it shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
- (a) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement;
  - (b) meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7; and
  - (c) at all times provide a level of security which:
    - (i) is in accordance with Law and this Agreement;
    - (ii) as a minimum demonstrates Good Industry Practice;
    - (iii) complies with the Baseline Security Requirements;
    - (iv) addresses issues of incompatibility with the Supplier's own organisational security policies;

- (v) meets any specific security threats of immediate relevance to the Services and/or Authority Data;
  - (vi) complies with the security requirements as set out in Schedule 2.1 (*Services Description*);
  - (vii) complies with the Authority's IT policies; and
  - (viii) is in accordance with the Security Policy Framework.
- (d) document the security incident management processes and incident response plans;
  - (e) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
  - (f) be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).
- 3.4 Subject to Clause 20.11 (*Authority Data and Security Requirements*) the references to standards, guidance and policies set out in Paragraph 3.3 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.3, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Authority pursuant to Paragraph 3.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.3 to 3.5 shall be deemed to be reasonable.

- 3.7 Approval by the Authority of the ISMS pursuant to Paragraph 3.6 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

#### **4 SECURITY MANAGEMENT PLAN**

- 4.1 Within 20 Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.

- 4.2 The Security Management Plan shall:

- (a) be based on the initial Security Management Plan set out in Annex 2;
- (b) comply with the Baseline Security Requirements;
- (c) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
- (d) detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (e) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (f) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);
- (g) demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offerings from the G-Cloud catalogue);

- (h) set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in Schedule 6.1 (*Implementation Plan*) for the Supplier to meet the full obligations of the security requirements set out in Schedule 2.1 (*Services Description*) and this Schedule;
  - (i) set out the scope of the Authority System that is under the control of the Supplier;
  - (j) be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards;
  - (k) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and
  - (l) be in accordance with the Security Policy Framework.
- 4.3 If the Security Management Plan submitted to the Authority pursuant to Paragraph 4.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 4.3 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

## **5 AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN**

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
- (a) emerging changes in Good Industry Practice;
  - (b) any change or proposed change to the IT Environment, the Services and/or associated processes;
  - (c) any new perceived or changed security threats; and
  - (d) any reasonable change in requirement requested by the Authority.



- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
- (a) suggested improvements to the effectiveness of the ISMS;
  - (b) updates to the risk assessments;
  - (c) proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
  - (d) suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, an Authority request, a change to Schedule 2.1 (*Services Description*) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.
- 5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

## **6 SECURITY TESTING**

- 6.1 The Supplier shall conduct relevant Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after significant architectural changes to the IT Environment or after any change or amendment to the ISMS, (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

- 6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority test adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority test.
- 6.4 Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.
- 6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).

## **7 ISMS COMPLIANCE**

- 7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements. The Supplier shall also carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.
- 7.2 If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.

- 7.3 If, as a result of any such independent audit as described in Paragraph 7.2 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **8 BREACH OF SECURITY**

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

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

- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
  - (i) minimise the extent of actual or potential harm caused by any Breach of Security;
  - (ii) remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;
  - (iii) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
  - (iv) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
  - (v) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Authority's request within 2 Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (b) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

- 8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.

## **9 VULNERABILITES AND CORRECTIVE ACTION**

- 9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.
- 9.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:
- (a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and
  - (b) Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:
- (a) the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
  - (b) the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
  - (c) the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
- 9.4 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:

- (a) where upgrading such Supplier COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version ; or
- (b) is agreed with the Authority in writing.

9.5 The Supplier shall:

- (a) implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
- (b) ensure that the IT Environment (to the extent that the IT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
- (c) ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Term;
- (d) pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3(e);
- (e) from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority within 5 Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
- (f) propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;
- (g) remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier Solution and IT Environment); and
- (h) inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment and provide initial indications of possible mitigations.

9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 9, the Supplier shall immediately notify the Authority.

9.7 A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

## **10 BASELINE PERSONNEL SECURITY STANDARD (BPSS)**

- 10.1 Where required by the Authority, the Supplier shall comply with HMG Baseline Personnel Security Standard (BPSS) pre-employment checks for staff they propose to fulfil for this Contract. This will be in line with Cabinet Office guidance on BPSS and the Home Office code of practice on preventing illegal working, which can be found at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

## ANNEX 1: BASELINE SECURITY REQUIREMENTS

### 1 Higher Classifications

- 1.1 The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

### 2 End User Devices

- 2.1 When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group ("CESG") to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme ("CPA").
- 2.2 Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance-2>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

### 3 Data Processing, Storage, Management and Destruction

- 3.1 The Supplier and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority information is only carried out offshore within:
- (a) the European Economic Area (EEA);
  - (b) in the US if the Supplier and or any relevant Sub-contractor have signed up to the US-EU Safe Harbour Agreement; or

- (c) in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.

### 3.3 The Supplier shall:

- (a) provide the Authority with all Authority Data on demand in an agreed open format;
- (b) have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
- (c) securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- (d) securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

## 4 Networking

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network (“PSN”) framework (which makes use of Foundation Grade certified products).
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

## 5 Security Architectures

- 5.1 The Supplier shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the Supplier Solution.

## 6 Personnel Security

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: employment history for at least the last three years, identity, unspent criminal convictions and right to work (including nationality and immigration status).



- 6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Working Day.

## **7 Identity, Authentication and Access Control**

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Supplier shall retain an audit record of accesses.

## **8 Audit and Monitoring**

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
  - (a) Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
  - (b) Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with Paragraph 17 for a period of at least 6 months.

## ANNEX 2: SECURITY MANAGEMENT PLAN

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 2.5**

#### **INSURANCE REQUIREMENTS**

## **Insurance Requirements**

### **1 OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
  - (b) appropriately regulated; and
  - (c) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 Where any Insurances are provided by an Affiliate of the Supplier, the Supplier shall provide to the Authority on the Effective Date (or inception of the relevant Insurances if later) and thereafter within 10 Working Days of written request from the Authority evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Authority. In the absence of a Financial Distress Event, the Authority shall not make any such request more than annually.
- 1.5 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

### **2 GENERAL OBLIGATIONS**

Without limiting the other provisions of this Agreement, the Supplier shall:

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3 FAILURE TO INSURE**

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

### **4 EVIDENCE OF INSURANCES**

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

### **5 AGGREGATE LIMIT OF INDEMNITY**

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

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

## **6 CANCELLATION**

- 6.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

## **7 INSURANCE CLAIMS**

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

## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

#### **1 Insured**

The Supplier

#### **2 Interest**

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

(a) death or bodily injury to or sickness, illness or disease contracted by any person; and

(b) loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

#### **3 Limit of indemnity**

Public Liability Insurance = not less than [REDACTED]

Product Liability Insurance = not less than [REDACTED]

The insurance levels required shall be in respect of any one occurrence, the number of occurrences being unlimited, but to be limited to an aggregate limit of [REDACTED] per annum.

#### **4 Territorial limits**

United Kingdom

#### **5 Period of insurance**

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

#### **6 Cover features and extensions**

Indemnity to principals clause.

#### **7 Principal exclusions**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

## **PART B: PROFESSIONAL INDEMNITY INSURANCE**

### **1 Insured**

The Supplier

### **2 Interest**

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

### **3 Limit of indemnity**

Not less than [REDACTED] in respect of any one claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.

### **4 Territorial Limits**

United Kingdom

### **5 Period of insurance**

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

### **6 Cover features and extensions**

Retroactive cover to apply to any "claims made policy wording" in respect of this Agreement or retroactive date to be no later than the Effective Date.

### **7 Principal exclusions**

#### **7.1 War and related perils**

#### **7.2 Nuclear and radioactive risks**



**8 Maximum deductible threshold**

- 8.1 Not to exceed the Supplier's policy excess for Professional Indemnity Insurance of [REDACTED] for each and every claim.

**PART C: UNITED KINGDOM COMPULSORY INSURANCES**

The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance, to be set at [REDACTED] and motor third party liability insurance.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 2.6**

#### **PERSONAL DATA AND DATA SUBJECTS**

## ANNEX 1: DATA PROCESSING

### 1 DEFINITIONS

- 1.1 In this Schedule 2.6, the definitions at Schedule 1 of the Model Services Contract shall apply.

### 2 DATA PROCESSING (GENERAL DATA PROTECTION REGULATION)

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Supplier is the Data Processor in accordance with Clause 23 (*Personal Data and Data Subjects*).
- 2.2 The Supplier as the Data Processor shall comply with any further written instructions with respect to processing by the Authority as Data Controller. Any such further instructions shall be incorporated into this Schedule 2.6.
- 2.3 This Schedule 2.6 shall be completed by the Authority as Data Controller, who may take account of the view of the Data Processor, however the final decision as to the content of this Schedule 2.6 shall be with the Authority as Data Controller at its absolute discretion.
- 2.4 The contact details of the Supplier as Data Processor's Data Protection Officer are stated below:

[REDACTED]

Description	Details
Subject matter of the processing	[REDACTED]
Duration of the processing	[REDACTED]
Nature and purposes of the processing	[REDACTED]
Type of Personal Data	[REDACTED]

Categories of Data Subject	[REDACTED]
Plan for return and destruction of the data once the processing is complete  UNLESS requirement under European Union or European member state law to preserve that type of data	[REDACTED]

## **ANNEX 2: DATA CONTROLLER**

The Authority as Data Controller shall be the Data Controller of all data in the Q-Flow Software will be maintained by the Authority. The Supplier may upload information in bulk as part of the Implementation Plan at Schedule 6.1, where the Authority provides the data in Microsoft Excel format.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 3**

#### **AUTHORITY RESPONSIBILITIES**

## Authority Responsibilities

### 1 INTRODUCTION

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be “Authority Responsibilities”.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

### 2 GENERAL OBLIGATIONS

The Authority shall:

- (a) perform those obligations of the Authority which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*));
- (b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- (c) provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Agreement as defined in the Implementation Plan;
- (d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- (e) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority’s normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 4.1**

#### **SUPPLIER SOLUTION**



## **Supplier Solution**

The Supplier Solution shall include the Supplier's Invitation to Tender response to the advert in the Official Journal of the European Union (reference 2017 / S 174-356360), all clarifications provided during the procurement process and any subsequent post-tender clarifications.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 4.2**

#### **COMMERCIALLY SENSITIVE INFORMATION**

### Commercially Sensitive Information

Tender reference	Clause/paragraph numbered (or other identification)	Explanation of harm which may result from disclosure and time period applicable to any sensitivity
Annex B	Worksheet “Input_Sheet”	[REDACTED]
Annex K	All pages inclusive.	[REDACTED]
Annex M	All pages inclusive	[REDACTED]
Annex N	All tabs inclusive	[REDACTED]

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 4.3**

#### **NOTIFIED KEY SUB-CONTRACTORS**

### Notified Key Sub-Contractors

- 1 In accordance with Clause 15.7 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/ Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
Little Fish (UK) Limited	Price House, 37 Stoney Street, Nottingham NG1 1LS 04700876	Proactive Infrastructure and Application Monitoring and 'First Response' Support.  Little Fish UK Limited are a UK based organisation with UK based staff. They do not have offshore (non-UK) staff, therefore the Supplier can explicitly confirm that no one from Little Fish UK Limited outside of the UK would have access to the data.	£50,000 per annum (excluding VAT), or 8% of the projected Charges over the maximum 5-year Term	IT Business Services	Level 1

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 4.4**

#### **THIRD PARTY CONTRACTS**

### Third Party Contracts

- 1 The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
- 2 The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description
Little Fish (UK) Limited	Price House 37 Stoney Street, Nottingham NG1 1LS  Company number: 04700876	Managed Support Services
Iron Mountain (UK) PLC trading as Iron Mountain Intellectual Property Management	Cottons Centre 3 <sup>rd</sup> Floor Tooley Street London SE1 2TT  Company number: 01478540	Escrow Agreement
Microsoft Limited	Microsoft Campus Thames Valley Park Reading Berkshire RG6 1WG  Company number: 01624297	Cloud Computing Services

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 5**

#### **SOFTWARE**



## Software

### 1 THE SOFTWARE

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

### 2 SUPPLIER SOFTWARE

- 2.1 The Supplier Software includes the following items:

**Server Size:** Unlimited

**Number of Web Servers:** 6

Software Licence & Code	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	1	n/a	1	COTS
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	1	n/a	1	COTS
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	1	n/a	1	COTS
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	1	n/a	1	COTS

[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	1	100 logins (concurrent)	1	COTS
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	6,000	Concurrent Logins	1	COTS
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	TBC as required	Concurrent Logins	1	COTS
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	700	Concurrent Logins	1	COTS
[REDACTED]	Q-Flow	Provide functionality relevant to the appointment booking system being provided.	400 (100 to be used for API)	Concurrent Logins	1	COTS

**ANNEX 1: FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs**

Q-nomy (UK) Limited  
Technology House  
48-54 Goldsworth Road  
Woking  
Surrey  
GU21 6LE  
(The Supplier)

The Secretary of State for Work and Pensions  
Caxton House  
Tothill Street  
Westminster  
London  
SW1H 9NA  
(The Authority)

10<sup>th</sup> of July 2018

Dear Sirs

**LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs**

We refer to the agreement between us dated 10<sup>th</sup> of July in respect of Appointment Booking System - Universal Credit Full Service (the “Agreement”). Capitalised expressions used in this letter have the same meanings as in the Agreement.

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

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

Yours faithfully,

Signed:

**On behalf of Q-nomy (UK) Limited**

**ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING**  
**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on [*date*]

**BETWEEN:**

- (1) [*insert name*] of [*insert address*] (the “**Sub-licensee**”); and
- (2) **Q-nomy (UK) Limited** of Technology House, 48-54 Goldsworth Road, Woking, Surrey, GU21 6LE (the “**Supplier**” and together with the Supplier, the “**Parties**”).

**WHEREAS:**

- (A) The Secretary of State for Work and Pensions (the “**Authority**”) and the Supplier are party to a contract dated 10<sup>th</sup> of July 2018 (the “**Contract**”) for the provision by the Supplier of Appointment Booking System - Universal Credit Full Service to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

**IT IS AGREED as follows:**

**1 Interpretation**

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

**“Confidential Information”**

means:

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

(i) the Supplier; or

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

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

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

(d) Information derived from any of the above,

but not including any Information that:

was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;

the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;

was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

was independently developed without access to the Confidential Information;

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

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

## 1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

## 2 Confidentiality Obligations

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

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

### **3 Permitted Disclosures**

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
  - (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
  - (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
  - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
- (b) ask the court or other public body to treat the Confidential Information as confidential.

#### **4 General**

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
  - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to [REDACTED].
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.



- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## 5 Notices

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

5.2 Any Notice:

- (a) if to be given to the Supplier shall be sent to:

Q-nomy (UK) Limited, Technology House, 48-54 Goldsworth Road, Woking,  
Surrey, GU21 6LE

Attention: [REDACTED]

- (b) if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]  
[Address]

Attention: [ ]

## 6 Governing law

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

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

**For and on behalf of Q-nomy (UK) Limited**

Signature:

---

Date:

Name:

Position:

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

Signature:

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Date:

Name:

Position:

### ANNEX 3: ESCROW AGREEMENT

The Authority agrees to pay the Supplier the cost of £ (*insert Escrow charge*) per annum to enable performance of the Supplier's obligations with regards to Clauses 5.15, 5.16, 5.17 and 5.18 (*Escrow Agreement*). The Supplier shall ensure all costs are paid to the Escrow Agent as per the Escrow Agreement below.

Costs for the Escrow Agreement shall be reviewed on an annual basis and agreed between the Parties.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 6.1**

#### **IMPLEMENTATION PLAN**

## **Implementation Plan**

### **1 INTRODUCTION**

#### **1.1 This Schedule:**

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

### **2 OUTLINE IMPLEMENTATION PLAN**

#### **2.1 The Outline Implementation Plan is set out in Annex 1.**

#### **2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (*Authority Cause*)).**

### **3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN**

#### **3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 20 Working Days of the Effective Date.**

#### **3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:**

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
  - (i) the completion of each design document;
  - (ii) the completion of the build phase;
  - (iii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and
  - (iv) training and roll-out activities;
- (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next 15 months, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
- (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- (e) is produced using a software tool as specified, or agreed by the Authority.

- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
    - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
    - (i) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
    - (ii) any other work in progress in relation to the Detailed Implementation Plan; and
  - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the draft Detailed Implementation Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.
- 4 UPDATES TO AND MAINTAINANCE OF THE DETAILED IMPLEMENTATION PLAN**
- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every 3 months starting 3 months from the Effective Date;

- (b) without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
- (c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
- (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.

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

- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).

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

## 5 GOVERNMENT REVIEWS

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

## ANNEX 1: OUTLINE IMPLEMENTATION PLAN



Milestone	Deliverables ( <i>bulleted list showing all Deliverables (and associated tasks) required for each Milestone</i> )	Duration/Effort (Working Days)	Milestone Date	Authority Responsibilities (if applicable)	Link to ATP/CPP
1. Pre-Production Environment	The Supplier shall make available the Pre-Production Environment to the Authority.	10 to 15	10 to 15 Working Days from the Effective Date of the Agreement		
2. Instruction to Commission Production Environment	<p>The Department shall formerly request the Supplier to commission (build and make available) the Production Environment.</p> <p>The Supplier shall make available the Production Environment to the Department, as soon as reasonably possibly following such request.</p>	10 to 15	10 to 15 Working Days from the Effective Date of the Agreement		
3. Rota-functionality	The Supplier to deliver rota functionality to the Authority's Pre-Production Environment.	50 to 60 subject to final agreed scope and requirements	30 Working Days from the Effective Date of the Agreement		

<p>4. Performance and System User Testing</p>	<p>The Authority to sign off on performance testing upon demonstration that the Supplier has met the Test Success Criteria and the Q-Flow Software can perform the Contract at expected scope, scale and volume.</p> <ul style="list-style-type: none"> <li>• System Test Report (Schedule 6.2)</li> <li>• Final Inspection and Testing Report Change (Schedule 6.2)</li> <li>• Defects Log</li> <li>• Outline Implementation Plan</li> <li>• Project Management Plan (including Service Management and on-boarding requirements)</li> <li>• Risk and Issues Management Plan</li> <li>• Architecture Plan</li> </ul>	<p>10</p>	<p>30 to 40 Working Days from the Effective Date of the Agreement</p>		
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5. User Readiness for Service and Implementation	<p>The Supplier to deliver training to locations specified by the Authority.</p> <ul style="list-style-type: none"> <li>• Training Plan</li> <li>• Training Scripts</li> <li>• Risk and Issues Management Plan</li> <li>• Detailed Implementation Plan</li> <li>• Project Management Plan (including Service Management and on-boarding requirements)</li> <li>• Data Conversion &amp; Cutover Plan</li> <li>• Architecture Plan</li> </ul>	25	55 to 65 Working Days from the Effective Date of the Agreement		
6. Escrow	Signing of Escrow Agreement at Annex 3 of Combined Schedules to enable performance of the Supplier's obligations with regards to Clauses 5.15, 5.16, 5.17 and 5.18 (Escrow Agreement).	N/A	10 <sup>th</sup> of August 2018		
7. Roll Out Commencement	Delivery of the 1 <sup>st</sup> Site, to enable the site to operate appointments through the Production environment.	TBC	7 <sup>th</sup> of September 2018		
8. Go-Live	Achieve 100% migration of Universal Credit Full Service appointment booking requirements successfully on to Q-Flow Software in the production environment.	TBC	30 <sup>th</sup> of November 2018		

9. In-Service Support	<p>All In Service Support requirements complete to support successful migration and achievement of Go-Live date.</p> <ul style="list-style-type: none"> <li>• Post Implementation Report</li> <li>• Data Conversion and Cut-Over Plan</li> <li>• Service Delivery Reports</li> <li>• Risk and Issues Log</li> <li>• Project Management Plan (including Service Management and on-boarding requirements)</li> <li>• Defects Log</li> <li>• Training Plan</li> </ul>	TBC	30 <sup>th</sup> of November 2018		
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## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 6.2**

#### **TESTING PROCEDURES**

## Testing Procedures

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Component”</b>	any constituent parts of the infrastructure for a Service, hardware or Software;
<b>“Material Test Issue”</b>	a Test Issue of Severity Level 1 or Severity Level 2;
<b>“Severity Level”</b>	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
<b>“Test Certificate”</b>	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
<b>“Test Issue”</b>	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
<b>“Test Issue Threshold”</b>	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan ;
<b>“Test Issue Management Log”</b>	a log for the recording of Test Issues as described further in Paragraph 9.1;
<b>“Test Plan”</b>	<p>a plan:</p> <ul style="list-style-type: none"><li>(a) for the Testing of Deliverables; and</li><li>(b) setting out other agreed criteria related to the achievement of Milestones,</li></ul> <p>as described further in Paragraph 5;</p>
<b>“Test Reports”</b>	the reports to be produced by the Supplier setting out the results of Tests;
<b>“Test Specification”</b>	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
<b>“Test Strategy”</b>	a strategy for the conduct of Testing as described further in Paragraph 4;

<b>“Test Success Criteria”</b>	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
<b>“Test Witness”</b>	any person appointed by the Authority pursuant to Paragraph 10.1; and
<b>“Testing Procedures”</b>	the applicable testing procedures and Test Success Criteria set out in this Schedule .

## 2 RISK

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

## 3 TESTING OVERVIEW

- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 The Supplier shall not submit any Deliverable for Testing:
- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
  - (b) until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
  - (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

- 3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

#### **4 TEST STRATEGY**

- 4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.
- 4.2 The final Test Strategy shall include:
- (a) an overview of how Testing will be conducted in accordance with the Implementation Plan;
  - (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
  - (c) the method for mapping the expected Test results to the Test Success Criteria;
  - (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
  - (e) the procedure to be followed to sign off each Test;
  - (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
  - (g) the names and contact details of the Authority's and the Supplier's Test representatives;
  - (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
  - (i) the technical environments required to support the Tests; and
  - (j) the procedure for managing the configuration of the Test environments.



## **5 TEST PLANS**

- 5.1 The Supplier shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 5.2 Each Test Plan shall include as a minimum:
- (a) the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
  - (b) a detailed procedure for the Tests to be carried out, including:
    - (i) the timetable for the Tests, including start and end dates;
    - (i) the Testing mechanism;
    - (ii) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
    - (iii) the mechanism for ensuring the quality, completeness and relevance of the Tests;
    - (iv) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;
    - (v) the process which the Authority will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
    - (vi) the Test Schedule;
    - (vii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
  - (c) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.
- 5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

## **6 TEST SUCCESS CRITERIA**

The Test Success Criteria for:

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

## **7 TEST SPECIFICATION**

- 7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 7.2 Each Test Specification shall include as a minimum:
- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
  - (b) a plan to make the resources available for Testing;
  - (c) Test scripts;
  - (d) Test pre-requisites and the mechanism for measuring them; and
  - (e) expected Test results, including:
    - (i) a mechanism to be used to capture and record Test results; and
    - (ii) a method to process the Test results to establish their content.

## **8 TESTING**

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.
- 8.3 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.
- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 The Supplier shall provide to the Authority in relation to each Test:
- (a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
  - (b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- (a) an overview of the Testing conducted;
  - (b) identification of the relevant Test Success Criteria that have been satisfied;
  - (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
  - (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
  - (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
  - (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

## **9 TEST ISSUES**

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.
- 9.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## **10 TEST WITNESSING**

- 10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
- (a) shall actively review the Test documentation;

- (b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
- (c) shall not be involved in the execution of any Test;
- (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- (e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
- (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## 11 TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
  - (a) adherence to an agreed methodology;
  - (b) adherence to the agreed Testing process;
  - (c) adherence to the Quality Plan;
  - (d) review of status and key development issues; and
  - (e) identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the Supplier at least 5 Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.

- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:
- (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
  - (b) subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.
- 11.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

## **12 OUTCOME OF TESTING**

- 12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:
- (a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;
  - (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
  - (c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

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

### **13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**

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

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

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

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

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

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

- 13.5 If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

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

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

## ANNEX 1: TEST ISSUES - SEVERITY LEVELS

- 14 **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
- 15 **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
  - 15.1 causes a Component to become unusable;
  - 15.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - 15.3 has an adverse impact on any other Component(s) or any other area of the Services;
- 16 **Severity Level 3 Test Issue:** a Test Issue which:
  - 16.1 causes a Component to become unusable;
  - 16.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - 16.3 has an impact on any other Component(s) or any other area of the Services;  
  
but for which, as reasonably determined by the Authority, there is a practicable workaround available;
- 17 **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
- 18 **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services

## ANNEX 2: TEST CERTIFICATE

To: **Q-nomy (UK) Limited**

FROM: **The Secretary of State for Work and Pensions**

[*Date*]

Dear Sirs,

### TEST CERTIFICATE

Deliverables: [*insert description of Deliverables*]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the **The Secretary of State for Work and Pensions** (the “**Authority**”) and **Q-nomy (UK) Limited** (the “**Supplier**”) dated 10<sup>th</sup> of July 2018.

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

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

**OR**

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

*\*delete as appropriate*

Yours faithfully

[*Name*]

[*Position*]

acting on behalf of **The Secretary of State for Work and Pensions**



### ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: Q-nomy (UK) Limited

FROM: The Secretary of State for Work and Pensions

[Date]

Dear Sirs,

#### MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [*insert description of Milestone*]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the **The Secretary of State for Work and Pensions** (the “**Authority**”) and **Q-nomy (UK) Limited** (the “**Supplier**”) dated 10<sup>th</sup> of July 2018.

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

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

OR

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

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

*\*delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **The Secretary of State for Work and Pensions**

## ANNEX 4: TEST SUCCESS CRITERIA

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

Test	Pre-conditions*	Test Success Criteria
<i>[List all Tests relating to ATP Milestone]</i>		

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

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

CPP Milestone Charge No.	Test	Test Success Criteria
	<i>[List all Tests relating to CPP Milestone Charge No.]</i>	

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 7.1**

#### **CHARGES AND INVOICING**

## Charges and Invoicing

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Achieved Profit Margin”</b>	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Part C) to (and including) the last day of the previous Contract Year;
<b>“Anticipated Contract Life Profit Margin”</b>	the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;
<b>“Capped ADR”</b>	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, including Table 3 in Annex 1;
<b>“Certificate of Costs”</b>	a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;
<b>“Costs”</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none"><li>(i) base salary paid to the Supplier Personnel;</li><li>(ii) employer’s national insurance contributions;</li><li>(iii) pension contributions;</li><li>(iv) car allowances;</li><li>(v) any other contractual employment benefits;</li><li>(vi) staff training;</li><li>(vii) work place accommodation;</li></ul>

- (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
  - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
- (d) Forecast Contingency Costs;
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;  
but excluding:
  - (i) Overhead;
  - (ii) financing or similar costs;
  - (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
  - (iv) taxation;
  - (v) fines and penalties;
  - (vi) amounts payable under Schedule 7.3 (*Benchmarking*); and
  - (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**“Delay Payment Rate”**

has the meaning given in Paragraph 1.1(a) of Part C;

<b>“Forecast Contingency Costs”</b>	the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed ‘Forecast Contingency Costs’ in the Risk Register (as such costs are updated from time to time);
<b>“Guaranteed Maximum Price”</b>	in relation to a Milestone, 110% of the Target Price for the relevant Milestone;
<b>“Incurred Costs”</b>	in relation to a Milestone, the sum of: <ul style="list-style-type: none"> <li>(a) the fixed day costs set out in Table 4 of Annex 1 multiplied by the number of Man Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and</li> <li>(b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;</li> </ul>
<b>“Indexation” and “Index”</b>	the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;
<b>“Man Day”</b>	7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>“Man Hours”</b>	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier’s offices, or to and from the Sites) but excluding lunch breaks;
<b>“Maximum Permitted Profit Margin”</b>	the Anticipated Contract Life Profit Margin plus 5%;
<b>“Milestone Group”</b>	has the meaning given in Paragraph 1.5 of Part B;
<b>“Milestone Retention”</b>	has the meaning given in Paragraph 1.3 of Part B;
<b>“Overhead”</b>	those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and

any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Table 4 of Annex 1;

<b>“Reimbursable Expenses”</b>	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"><li>(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and</li><li>(b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li></ul>
<b>“Supplier Profit”</b>	<p>in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;</p>
<b>“Supplier Profit Margin”</b>	<p>in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;</p>
<b>“Supporting Documentation”</b>	<p>sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;</p>

<b>“Target Cost”</b>	has the meaning given in Paragraph 3.1 of Part A;
<b>“Target Price”</b>	has the meaning given in Paragraph 3.1 of Part A;
<b>“Verification Period”</b>	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Annex 5.



## PART A: PRICING

### 1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 1 sets out the Pricing Schedule submitted by the Supplier as part of their Invitation to Tender response, and which shall be the maximum price for this Agreement.
- 1.3 Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
  - (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
  - (b) **“Fixed Price”**, in which case the provisions of Paragraph 4 shall apply; or
  - (c) **“Firm Price”**, in which case the provisions of Paragraph 5 shall apply.
- 1.4 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
  - (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
  - (b) **“Volume Based”** pricing, in which case the provisions of Paragraph 6 shall apply; or
  - (c) **“Fixed Price”** in which case the provisions of Paragraph 4 shall apply.

### 2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
  - (a) the day rates set out in Table 2 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
    - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
    - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 3 of Annex 1 unless the Supplier has obtained the Authority’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed;

- (iii) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
      - (A) the total number of days expended by the Supplier in relation to the relevant Milestone; or
      - (B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,
 by the Capped ADR; and
    - (iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
  - (b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.
- 2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Annex 1 and the Capped ADR in accordance with Paragraph 5 of Part C, but any caps set out in Tables 2 and 3 of Annex 1 shall not be subject to Indexation.
- 3 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES**
- 3.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 4 of Annex 1.
- 3.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.
- 4 FIRM PRICE MILESTONE PAYMENTS**
- 4.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.
- 4.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.
- 5 VOLUME BASED SERVICE CHARGES**
- 5.1 Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 6 of Annex 1.

- 5.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 6 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.
- 5.3 The Charge per unit set out in Table 6 of Annex 1 shall be subject to annual Indexation.

## **6 REIMBURSEABLE EXPENSES**

### **6.1 Where:**

- (a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and
- (b) the Authority so agrees in writing and in advance of the Reimbursable Expenses being claimed,

the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation in the format set out in Table 7 of Annex 1.

- 6.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.
- 6.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or
  - (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

## PART B: CHARGING MECHANISMS

### 1 MILESTONE PAYMENTS

1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.

1.2 Each invoice relating to a Milestone Payment shall be supported by:

- (a) a Milestone Achievement Certificate; and
- (b) where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.

1.3 The “**Milestone Retention**” for each Milestone shall be calculated as follows:

- (a) where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, 10% of the Target Price for the Milestone;
- (b) where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, 10% of the Charges for that Milestone,

and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

1.4 Where Milestones are stated in Table 5 of Annex 1 to constitute a group of Milestones (a “**Milestone Group**”) and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

- (a) in respect of each Milestone within the Milestone Group, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate; and
- (b) no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
  - (i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;
  - (ii) issue to the Authority an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);

- (iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.5(b)(ii), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
  - (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.
- 1.5 If the Supplier does not repay any such sum as is referred to in Paragraph 1.4(b)(ii) or 1.5(b)(ii) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.
- 1.6 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.4(b)(iii) or 1.5(b)(iii), the Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.8.

#### **Release of Milestone Retentions**

- 1.7 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions that relate to Milestones identified in the “*CPP Milestone Charge Number*” column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Annex 2 and corresponding CPP Milestone Charge Number identified in Table 2 of Annex 4 of Schedule 6.2 (*Testing Procedures*) as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

## **2 SERVICE CHARGES**

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the “*Service Charge Trigger Event*” column of Table 2 of Annex 2.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
  - (a) commences on a day other than the first day of a month; and/or
  - (b) ends on a day other than the last day of a month,

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

- 2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

### **3 OPTIONAL SERVICES**

If the Authority gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

- (a) the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and
- (b) the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,

in both cases using the relevant rates and prices specified in Annex 1.

## PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

### 1 DELAY PAYMENTS

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

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

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

- (a) where the Supplier has given the Authority less than 3 months’ prior notice of the Delay, the amount set out in column 4 of Table 1 of Annex 2 for the Key Milestone;
- (b) where the Supplier has given the Authority between 3 months’ and 6 months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Annex 2 for the Key Milestone; or
- (c) where the Supplier has given the Authority more than 6 months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Annex 2 for the Key Milestone.

1.3 Where the Supplier serves a notice pursuant to Paragraph 1.2(b) or 1.2(c), the Supplier shall, within 5 Working Days of the date the notice is served:

- (a) pay to the Authority in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.4) an amount equal to:
  - (i) in the case of a notice served pursuant to Paragraph 1.2(b), 5 days of Delay Deductions; or
  - (ii) in the case of a notice served pursuant to Paragraph 1.2(c), 10 days of Delay Deductions in accordance with paragraph 1.4,

in each case calculated at the applicable Delay Payment Rate; and

- (b) issue a credit note to the Authority in respect of the relevant amount.

Failure to make payment within 10 Working Days of the Supplier’s notice shall invalidate the notice.

- 1.4 Any amounts paid to the Authority pursuant to Paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier's notice:
- (a) does not occur; or
  - (b) does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3(a) or 1.3(b) as the case may be.
- 1.5 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.6 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to Paragraph 1.3) shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within 10 Working Days of expiry of the Delay Deduction Period, then the Supplier shall within 10 Working Days of expiry of the Delay Deduction Period:
- (a) issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and
  - (b) pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

## 2 PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE

- 2.1 If the Supplier is entitled in accordance with Clause 31.1(iii)(D) (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 25 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:
- (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
    - (i) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and
    - (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 31.1 (*Authority Cause*)



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

- (b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;
- (c) where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:
  - (i) the Target Price for the Milestone shall be increased in accordance with the following formula:

$$NTP = TP + (AC \times 1.x)$$

where:

NTP	is the revised Target Price for the relevant Milestone;
TP	is the original Target Price for the relevant Milestone;
AC	is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Authority Cause; and
x	is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Annex 1, expressed as a decimal; and

- (ii) the Guaranteed Maximum Price shall be increased to an amount equal to 110% of the Target Price as adjusted pursuant to Paragraph 2.1(c)(i);
- (d) where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestones in Annex 1 and Annex 2; and
- (e) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Authority paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Authority Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.

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

### 3 SERVICE CREDITS

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

- 3.2 For each Service Period:

- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a 1% deduction in the Service Charges; and
- (b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = (TSP \times X) / 100 \times AC$$

where:

SC	is the total Service Credits due to the Authority in £ for the relevant Service Period;
TSP	is the total Service Points that have accrued for the relevant Service Period;
X	is 1% per Service Point%; and
AC	is the total Services Charges that have been paid by the Authority in a 12-month period, from the Effective Date of the Agreement (or the first day of year 2 and year 3 of the Agreement) up to and including the end of the relevant Service Period (prior to deduction of applicable Service Credits).

**Example:**

[REDACTED]

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).
- 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

- 3.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate, or as a credit note from the Total Charges already paid which shall be refunded direct to the Authority in the Service Period immediately succeeding the Service Period to which they relate.
- 3.6 In the event that Service Credits are due to the Authority after the expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period, the payment of Service Credits will need to be made directly to the Authority.

#### **4 CHANGES TO CHARGES**

- 4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
- (a) be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and
  - (b) in no event exceed the Maximum Permitted Profit Margin.
- 4.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.
- 4.3 Pending agreement of a proposed Change to the Charges pursuant to this Part C, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with the appropriate Schedules, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.
- 4.4 For any Changes to the Charges:
- (a) the Authority (acting reasonably) may agree or reject the proposed adjustments;
  - (b) if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
  - (c) if the Parties cannot agree such revised adjustments and the Authority terminates this Agreement by issuing a Termination Notice to the Supplier pursuant to Clause 33.1(a) (Termination by the Authority), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Authority of the relevant Annual Contract Report.

#### **5 INDEXATION**

- 5.1 Any amounts or sums in this Agreement which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 5 to reflect the effects of inflation.

- 5.2 Where Indexation applies, the relevant adjustment shall be:
- (a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an “**adjustment date**”); and
  - (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 5.3 Except as set out in this Paragraph 5, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.
- 6 ALLOWABLE ASSUMPTIONS**
- 6.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 6.2 During each Verification Period, the Authority shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Authority deems is relevant to the Allowable Assumption being verified.
- 6.3 Within 10 Working Days of the end of each Verification Period, the Supplier shall provide the Authority with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.
- 6.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:
- (a) on the Financial Model greater than the associated trigger for invocation, as set out in column 9 of the table in Annex 5; or
  - (b) on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in column 3 of the table in Annex 5,
- in which case Paragraph 6.5 shall apply.
- 6.5 Where the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting:
- (a) the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan;

- (b) the Supplier may (subject to Paragraph 6.5(c)) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
- (c) where the Supplier proposes a Change to the Charges under Paragraph 6.5(b), the Change Request shall reflect the requirements of the table in Annex 5, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Annex 5.

## **7 RISK REGISTER**

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

## **PART D: INVOICING AND PAYMENT TERMS**

### **1 SUPPLIER INVOICES**

- 7.1 The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.2 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority.
- 7.2 The Supplier shall ensure that each invoice contains the following information:
- (a) the date of the invoice;
  - (b) a unique invoice number;
  - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
  - (d) the correct reference for this Agreement;
  - (e) the reference number of the purchase order to which it relates (if any);
  - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
  - (g) a description of the Services;
  - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc.);
  - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
  - (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
  - (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
  - (l) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
  - (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
  - (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).

- 7.3 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- 7.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

- 7.5 The Supplier shall submit all invoices and Supporting Documentation to:

Department for Work and Pensions  
PO Box 406  
SSCL  
Phoenix House,  
Celtic Springs Business Park  
Newport  
NP10 8FZ

E-mail: [APinvoices-DWP-U@sscl.gse.gov.uk](mailto:APinvoices-DWP-U@sscl.gse.gov.uk)

A copy of the invoice must also be forwarded to the Contract Supplier Management Team, to ensure the invoices are correctly receipted:

[INVOICING.TECHNOLOGY-CSMT@DWP.GSI.GOV.UK](mailto:INVOICING.TECHNOLOGY-CSMT@DWP.GSI.GOV.UK)

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

- 7.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 7.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 7.8 If the Authority fails to consider and verify an invoice in accordance with paragraphs 1.3 and 1.7, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 [*Payment in 30 days*] after a reasonable time has passed.

## **8 PAYMENT TERMS**

- 8.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 8.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

## ANNEX 1: PRICING MECHANISM

### 1 TABLE 1: PRICING SCHEDULE FOR THE AGREEMENT (SUPPLIER'S INVITATION TO TENDER RESPONSE)

[REDACTED]

Unless any Changes to the Charges are developed and agreed by the Parties in accordance with Schedule 8.2 (Change Control Procedure), the Charges in this Pricing Schedule shall represent the maximum Charges to be paid by the Authority in this Agreement.

### 2 TABLE 2: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

Supplier Personnel	Day Rate excluding VAT (£)
Technical Architect	[REDACTED]
Technical Engineer	[REDACTED]
Project Manager	[REDACTED]
Classroom Training	[REDACTED]
Hardware Installation	[REDACTED]
Software Installation	[REDACTED]
Data Migration	[REDACTED]
Data Testing	[REDACTED]

### 3 TABLE 3: MAXIMUM TIME AND MATERIALS CHARGES

Charge Number	Maximum Time and Materials Charges (the cap) (£) excluding VAT
Technical Architect	[REDACTED]



Technical Engineer	[REDACTED]
Project Manager	[REDACTED]
Classroom Training	[REDACTED]
Hardware Installation	[REDACTED]
Software Installation	[REDACTED]
Data Migration	[REDACTED]
Data Testing	[REDACTED]

#### 4 TABLE 4: FIXED PRICES

The Supplier shall invoice the Authority for Q-nomy Support - Extended Package (24/7/365), MS Azure - Pre Prod and Core API Licence (QJ-35) Charges on the Effective Date of the Agreement. MS Azure - Prod Charges represents a Milestone Payment and shall be invoiced in accordance with Table 1 of Annex 2.

Charge	Fixed Charge (£) excluding VAT
Q-nomy Support - Extended Package (24/7/365)	[REDACTED]
MS Azure - Pre Prod - Web/API Servers (A2 v2)	[REDACTED]
MS Azure - Pre Prod - SQL Servers (Standalone, DS4 v2)	[REDACTED]
MS Azure - Pre Prod - VPN Gateway (500mbps)	[REDACTED]
MS Azure - Pre Prod - Network Egress (100gb)	[REDACTED]
MS Azure - Pre Prod - MS SQL Licences	[REDACTED]
MS Azure - Prod - Web/API Servers (DS4 v2)	[REDACTED]
MS Azure - Prod - SQL Servers (Primary, Mirror, DS14 v2)	[REDACTED]
MS Azure - Prod - SQL Servers (Witness, DS1 v2)	[REDACTED]
MS Azure - Prod - SQL Servers (Reporting and DW, DS2 v2)	[REDACTED]
MS Azure - Prod - VPN Gateway (500mbps)	[REDACTED]
MS Azure - Prod - Network Egress (2tb)	[REDACTED]
MS Azure - Prod - MS SQL Licences	[REDACTED]
Core API Licence (QJ-35)	[REDACTED]

5 **TABLE 5: FIRM PRICES**

Charge	Firm Charge (£) excluding VAT
Escrow Agreement	[REDACTED]

6 **TABLE 6: VOLUME CHARGES**

Charge Number	Unit	Forecast Annual Unit consumption	Charge per unit (£) excluding VAT
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

In this Agreement the Authority shall give no commitment to the number of Licence subscriptions and/or appointment bookings during the initial term or extended term. On an annual basis and for each year of the Agreement, the Authority will only pay for the number of subscription licences required and there will be no estimation and/or true-up of licences. The Authority has the right to amend its number and/or unit requirements for licences in different years of the Agreement.

If a licence is consumed on the Effective Date of the Agreement or day 1 of years 2 and 3 of the Agreement, the Authority shall pay the 12-month subscription charge for that licence following receipt of a valid invoice. Any licences consumed after the Effective Date (or day 1 of years 2 and 3 of the contract) shall be paid for on a pro-rata basis up to the end of that year of the Agreement.

**7 TABLE 7: REIMBURSABLE EXPENSES**

Expense Type	Conditions/Category	Rate
[REDACTED]	[REDACTED]	
	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

Expenses Approval Template				
Expense type	Expense amount (£ excluding VAT)	Justification	Prior approval from Authority	Receipt attached

## ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

**1 TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS**

Charge	Pricing Mechanism (FIX / FIRM / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)		
			<3 months' notice	3-6 months' notice	>6 months' notice
Milestone Payment Instruction to Commission Production Environment	Fixed - see Annex 1 Table 6	M2 - payment to be made dependent on achievement of Milestone 2			

**2 TABLE 2: SERVICE CHARGES**

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g. SC1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SC2]	[FIX]		

**3 TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS**

Charge Number	Pricing Mechanism (FIX / FIRM / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)
[e.g. OMS1]	[FIRM]	[e.g. OMS2]	
[e.g. OMS2]	[FIRM]	[e.g. OMS2]	

4      **TABLE 4: OPTIONAL SERVICES SERVICE CHARGES**

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g. OSC1]	[VOL]	[e.g. Achievement of Milestone 6]	
[e.g. OSC2]	[FIX]		

### ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

I, [REDACTED], Chief Finance Officer of Q-nomy Inc. (Guarantor of the Supplier) certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the Appointment Booking System - Universal Credit Full Service (the “Agreement”) in relation to the following:

All Tables in Annex 1 to Schedule 7.1

All Tables in Annex 2 to Schedule 7.1

- 1 have been reasonably and properly incurred in accordance with Q-nomy (UK) Limited’s books, accounts, other documents and records;
- 2 are accurate and not misleading in all key respects; and
- 3 are in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

**Signed** [REDACTED], Chief Finance Officer of Q-nomy Inc. (Guarantor of Q-nomy (UK) Limited, ‘The Supplier’)

**Date - 10<sup>th</sup> of July 2018**

#### ANNEX 4: RISK REGISTER

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
Risk Number	Risk Name	Description of risk	Timing	Likelihood	Impact (£)	Impact (description)	Mitigation (description)	Cost of mitigation	Post-mitigation impact	Forecast Contingency Costs	Owner
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

#### ANNEX 5: ALLOWABLE ASSUMPTIONS



Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact  (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact  (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method  (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation  (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact  (period that the updated assumption will have an impact)	Expiry Date  (Date at which the Allowable Assumption expires)
Allowable Assumption 1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Allowable Assumption 2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 7.2**

#### **PAYMENTS ON TERMINATION**

## Payments on Termination

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

**“Applicable Supplier Personnel”**

any Supplier Personnel who:

- (i) at the Termination Date:
  - a) are employees of the Supplier;
  - b) are Dedicated Supplier Personnel;
  - c) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
- (ii) are dismissed or given notice of dismissal by the Supplier within:
  - d) 40 Working Days of the Termination Date; or
  - e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and

have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and

the Supplier can demonstrate to the satisfaction of the Authority:

- i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
- ii) are genuinely being dismissed for reasons of redundancy; and
- iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

**“Breakage Costs Payment”**

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

<b>“Compensation Payment”</b>	the payment calculated in accordance with Paragraph 6;
<b>“Contract Breakage Costs”</b>	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
<b>“Dedicated Supplier Personnel”</b>	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
<b>“Profit Already Paid”</b>	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
<b>“Redundancy Costs”</b>	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none"> <li>(a) any statutory redundancy payment; and</li> <li>(b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;</li> </ul>
<b>“Request for Estimate”</b>	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 33.1(a) ( <i>Termination by the Authority</i> ) to terminate this Agreement for convenience on a

	specified Termination Date;
<b>“Shortfall Period”</b>	has the meaning given in Paragraph 6.2;
<b>“Termination Estimate”</b>	has the meaning given in Paragraph 11.2;
<b>“Third Party Contract”</b>	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.4 ( <i>Third Party Contracts</i> );
<b>“Total Costs Incurred”</b>	the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;
<b>“Unrecovered Costs”</b>	the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ) as such Costs and Charges are forecast in the Financial Model;
<b>“Unrecovered Payment”</b>	an amount equal to the lower of: <ul style="list-style-type: none"> <li>(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and</li> <li>(b) the amount specified in Paragraph 4; and</li> </ul>
<b>“Unrecovered Profit”</b>	(Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date.

## 2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 34.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

## 3 BREAKAGE COSTS PAYMENT

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

- (a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

#### **Limitation on Breakage Costs Payment**

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

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

#### **Redundancy Costs**

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

#### **Contract Breakage Costs**

- 3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:
- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and
  - (b) the Supplier can demonstrate:
    - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
    - (ii) have been entered into by it in the ordinary course of business.

- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
  - (b) Assets not yet installed at the Termination Date.

#### **4 UNRECOVERED PAYMENT**

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

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

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

## 6 COMPENSATION PAYMENT

6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (*Payments by the Authority*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.

6.2 For the purposes of Paragraph 6.1, the “**Shortfall Period**” means:

- (a) where the Authority terminates this Agreement pursuant to Clause 33.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given falls short of 365 days; or
- (b) where the Supplier terminates this Agreement pursuant to Clause 33.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of 365 days,

but in each case subject to the limit set out in Paragraph 6.3.

6.3 The Compensation Payment shall be no greater than the lower of:

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

## 7 FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

## 8 INVOICING FOR THE PAYMENTS ON TERMINATION

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

## 9 SET OFF

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



## 10 NO DOUBLE RECOVERY

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.
- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

## 11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
  - (b) include:
    - (i) details of the mechanism by which the Termination Payment is calculated;
    - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
    - (iii) such information as the Authority may reasonably require; and
  - (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

## ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

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

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year	[REDACTED]	[REDACTED]	[REDACTED]
Anytime in the second Contract Year	[REDACTED]	[REDACTED]	[REDACTED]
Anytime in third Contract Year	[REDACTED]	[REDACTED]	[REDACTED]
Anytime in fourth Contract year (optional 12-month extension)	[REDACTED]	[REDACTED]	[REDACTED]
Anytime in fifth Contract year (optional 12-month extension)	[REDACTED]	[REDACTED]	[REDACTED]

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 7.3**

#### **BENCHMARKING**

## Benchmarking

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Benchmarked Service”</b>	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
<b>“Benchmarker”</b>	the independent third party appointed under Paragraph 3.1;
<b>“Benchmark Report”</b>	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
<b>“Benchmark Review”</b>	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
<b>“Comparable Service”</b>	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
<b>“Comparison Group”</b>	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
<b>“Equivalent Services Data”</b>	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period

which ended more than 36 months prior to the date of the appointment of the Benchmarker;

**“Good Value”**

in relation to a Benchmarked Service, that:

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

**“Upper Quartile”**

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

## **2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW**

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

## **3 APPOINTMENT OF BENCHMARKER**

- 3.1 The Authority shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may agreed in writing between the Parties.
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.

- 3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

#### **4 BENCHMARK REVIEW**

- 4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
- (a) a proposed timetable for the Benchmark Review;
  - (b) a description of the information that the Benchmarker requires each Party to provide;
  - (c) a description of the benchmarking methodology to be used;
  - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
  - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
  - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
  - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
  - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an varied draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.

- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
  - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
  - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
  - (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
  - (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
  - (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
  - (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

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

## **5 BENCHMARK REPORT**

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
  - (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
  - (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
  - (d) illustrate the method used for any normalisation of the Equivalent Services Data
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.



- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
  - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
    - (i) the Supplier shall immediately implement the relevant changes;
    - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
    - (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.
- 5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

## **ANNEX 1: APPROVED BENCHMARKERS**

## ANNEX 2: CONFIDENTIALITY AGREEMENT

### CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

#### BETWEEN:

- (1) **Q-nomy (UK) Limited** whose registered address is Technology House, 48-54 Goldsworth Road, Woking, Surrey, GU21 6LE (the “**Supplier**”); and
- (2) [insert name] of [insert address] (the “**Benchmarker**”) and together with the Supplier, the “**Parties**”).

#### WHEREAS:

- (A) The Secretary of State for Work and Pensions (the “**Authority**”) and the Supplier are party to a contract dated 10<sup>th</sup> of July 2018 (the “**Contract**”) for the provision by the Supplier of Appointment Booking System - Universal Credit Full Service to the Authority.
- (B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the “**Permitted Purpose**”).

#### IT IS AGREED as follows:

### 1 Interpretation

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

“**Confidential Information**” means:

- a) Information, including all personal data within the meaning of the Data Protection Legislation, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the

Benchmarkers' possession in connection with the Permitted Purpose;

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

- d) Information derived from any of the above,

but not including any Information that:

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

**"Information"**

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

**"Permitted Purpose"**

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;

- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

## **2 Confidentiality Obligations**

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker shall:

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

## **3 Permitted Disclosures**

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

- (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
  - (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
  - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 5.7 of schedule 7.3 (*Benchmarking*) to the Contract.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
  - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
  - (b) ask the court or other public body to treat the Confidential Information as confidential.

#### **4 General**

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
  - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to [REDACTED]
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## 5 Notices

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

### 5.2 Any Notice:

- (a) if to be given to the Supplier shall be sent to:

Q-nomy (UK) Limited whose registered address is Technology House, 48-54 Goldsworth Road, Woking, Surrey, GU21 6LE

Telephone: 0333-600-8090 Fax: 01276-53-7363

For the Attention of [REDACTED]

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

[Name of Organisation]  
[Address]

Attention: [ ]

## 6 Governing law

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

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

**For and on behalf of Q-nomy (UK) Limited**

Signature:

---

Date:

Name:

Position:

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

Signature:

---

Date:

Name:

Position:



## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 7.4**

#### **FINANCIAL DISTRESS**

## Financial Distress

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Credit Rating Level”** a credit rating level as specified in Annex 2;
- “Credit Rating Threshold”** the minimum Credit Rating Level for the Supplier and the Guarantor as set out in Annex 3 and for each Key Sub-contractor as set out in Schedule 4.3 (*Notified Key Sub-contractors*); and
- “Rating Agencies”** the rating agencies listed in Annex 1.

### 2 CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date the long term credit ratings issued for the Supplier and the Guarantor by each of the Rating Agencies are as set out in Annex 3.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier or the Guarantor (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier or the Guarantor, the Supplier shall ensure that the Supplier’s auditors or Guarantor’s auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier or the Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the “quick ratio” on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier or the Guarantor (as the case may be);
- B is the value of all marketable securities held by the Supplier or the Guarantor (as the case may be) determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier or the Guarantor (as the case may be); and
- D is the value at the relevant date of the current liabilities of the Supplier or the Guarantor (as the case may be).

2.4 The Supplier shall:

- (a) regularly monitor the credit ratings of the Supplier, the Guarantor and each Key Sub-contractor with the Rating Agencies; and
- (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Supplier, the Guarantor or relevant Key Sub-contractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier, the Guarantor or relevant Key Sub-contractor (as the case may be) at or below the applicable Credit Rating Level.

**3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

3.1 In the event of:

- (a) the credit rating of the Supplier, the Guarantor or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;
- (b) the Supplier, the Guarantor or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any Key Sub-contractor;
- (d) the Supplier, the Guarantor or any Key Sub-contractor committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
  - (i) commencement of any litigation against the Supplier, the Guarantor or any Key Sub-contractor with respect to financial indebtedness greater than [REDACTED] or obligations under a service contract with a total contract value greater than [REDACTED];
  - (ii) non-payment by the Supplier, the Guarantor or any Key Sub-contractor of any financial indebtedness;

- (iii) any financial indebtedness of the Supplier, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; or
- (iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Key Sub-contractor,

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Supplier shall (and shall procure that the Guarantor and/or any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
  - (i) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
  - (ii) provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require.

- 3.4 The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 3.5.
- 3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
  - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
  - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 3.6.

#### **4 TERMINATION RIGHTS**

The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if:

- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4(b);
- (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or

- (c) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c).

## **5 PRIMACY OF CREDIT RATINGS**

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
- (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii).

## **ANNEX 1: RATING AGENCIES**

- Dun & Bradstreet

## **ANNEX 2: CREDIT RATING LEVELS**

The Supplier must have a Dun & Bradstreet (or equivalent) risk indicator rating of 1 (Minimum risk) or 2 (Lower than average risk) to demonstrate that they have the sufficient financial capacity and stability to take on the Contract.



### ANNEX 3: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier	Must have a Dun & Bradstreet (or equivalent) risk indicator rating of 1 (Minimum risk) or 2 (Lower than average risk) to demonstrate that they have the sufficient financial capacity and stability to take on the Contract.	Must have a Dun & Bradstreet (or equivalent) risk indicator rating of 1 (Minimum risk) or 2 (Lower than average risk) to demonstrate that they have the sufficient financial capacity and stability to take on the Contract.
Guarantor	Must have a Dun & Bradstreet (or equivalent) risk indicator rating of 1 (Minimum risk) or 2 (Lower than average risk) to demonstrate that they have the sufficient financial capacity and stability to take on the Contract.	Must have a Dun & Bradstreet (or equivalent) risk indicator rating of 1 (Minimum risk) or 2 (Lower than average risk) to demonstrate that they have the sufficient financial capacity and stability to take on the Contract.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 7.5**

#### **FINANCIAL REPORTS AND AUDIT RIGHTS**

## Financial Reports and Audit Rights

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

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

**“Open Book  
Data”**

Term (as forecast in the latest Financial Model)  
by:

(i) [REDACTED]; or

(ii) [REDACTED];

complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

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

## **PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

### **1 FINANCIAL TRANSPARENCY OBJECTIVES**

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

#### **Understanding the Charges**

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

#### **Agreeing the impact of Change**

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

#### **Continuous improvement**

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

### **2 OPEN BOOK DATA**

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

## PART B: FINANCIAL REPORTS

### 1 PROVISION OF THE FINANCIAL REPORTS

#### 1.1 The Supplier shall provide

- (a) the Contract Inception Report on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

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

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

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

#### 1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
  - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
  - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
  - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
  - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
  - (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
  - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
  - (b) the forecast Charges for the remainder of the Term,

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

## **2 FINANCIAL MODEL**

- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;

- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
  - (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
    - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
    - (ii) the Authority has approved the relevant Financial Report.
- 2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).
- 3 Discussion of Quarterly Contract Reports and FINAL RECONCILIATION REPORT**
- 3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 4 Key Sub-contractors**
- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.



4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
  - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
  - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

## PART C: AUDIT RIGHTS

### 1 AUDIT RIGHTS

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
  - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
  - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
  - (d) to verify the Certificate of Costs and/or the Open Book Data;
  - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
  - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
  - (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
  - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
  - (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
  - (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
  - (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
  - (o) to review the accuracy and completeness of the Registers;
  - (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
  - (r) to review the Supplier's compliance with the Standards;
  - (s) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
  - (t) to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

## **2 CONDUCT OF AUDITS**

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
  - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Supplier System; and
  - (d) access to Supplier Personnel.

- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### **3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
  - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

### **4 RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
    - (i) the amount overpaid;
    - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
    - (iii) the reasonable costs incurred by the Authority in undertaking the audit,

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

- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 7.6**

#### **ANTICIPATED SAVINGS**

## ANTICIPATED SAVINGS

This Schedule defines the key benefit categories in which savings are anticipated.

Ref.	Benefit Category	Indicative amount (£k)	Timescale
1	<p><i>[E.g. - Reduction in Service Charges as Service delivery becomes more efficient and effective.</i></p> <p><i>Benefit realisation is measured against [a 2012/13 baseline.]</i></p>	£[amount] per annum	Contract Years [x] to [y]
2	<p><i>[E.g. - Improvements in Authority staff productivity from using more flexible and agile services that match the needs of the business.</i></p> <p><i>Benefits realisation is measured against a baseline of 4,000 directly employed staff in 2013/14.]</i></p>	£[amount] year on year improvement ([x]% productivity increase)	Contract Years [x] to [y]
3	<p><i>[E.g. - Reduced electrical power consumption arising from adoption of new low energy technology.</i></p> <p><i>Benefit realisation is measured against a 2012/13 baseline.]</i></p>	£[amount] per annum	Contract Years [x] to [y]

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 8.1**

#### **GOVERNANCE**



## **Governance**

### **1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

<b>“Board Member”</b>	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
<b>“Boards”</b>	the Service Management Board, Programme Board, Change Management Board, Technical Board and Risk Management Board and <b>“Board”</b> shall mean any of them;
<b>“Change Management Board”</b>	the body described in Paragraph 6;
<b>“Project Managers”</b>	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 1; and
<b>“Risk Management Board”</b>	the body described in Paragraph 8;
<b>“Service Management Board”</b>	the body described in Paragraph 4; and
<b>“Technical Board”</b>	the body described in Paragraph 7.

### **2 MANAGEMENT OF THE SERVICES**

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

### **3 BOARDS**

#### **Establishment and structure of the Boards**

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

- (b) Supplier Board Members;
  - (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);
  - (d) location of the Board's meetings; and
  - (e) planned start date by which the Board shall be established,
- shall be as set out in Annex 1.

3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

#### **Board meetings**

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

- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### **4 ROLE OF THE SERVICE MANAGEMENT BOARD**

The Service Management Board shall be responsible for the executive management of the Services and shall:

- (a) be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (b) report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
- (c) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
- (d) review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
- (e) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- (f) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
- (g) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

#### **5 ROLE OF THE PROGRAMME BOARD**

5.1 The Programme Board shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board; and
- (c) carry out the specific obligations attributed to it in Paragraph 5.2.

5.2 The Programme Board shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;

- (b) receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services; and
- (d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- (e) provide guidance and authorisation to the Change Management Board on relevant Changes.

## **6 ROLE OF THE CHANGE MANAGEMENT BOARD**

6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.

6.2 The Change Management Board shall:

- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:
  - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
  - (ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
  - (iii) will raise any risks or issues relating to the proposed Change; and
  - (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- (b) provide recommendations, seek guidance and authorisation from the Programme Board as required; and
- (c) approve or reject (close) all proposed Changes.

## **7 ROLE OF THE TECHNICAL BOARD**

7.1 The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.

7.2 The Technical Board shall:

- (a) ensure compliance with the Standards;
- (b) grant dispensations for variations from such compliance where appropriate;

- (c) assure the coherence and consistency of the systems architecture for the Supplier Solution;
- (d) monitor developments in new technology and reporting on their potential benefit to the Services;
- (e) provide advice, guidance and information on technical issues; and
- (f) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority.

## **8 ROLE OF THE RISK MANAGEMENT BOARD**

8.1 The Risk Management Board shall identify and manage risks relating to the performance of the Services.

8.2 The Risk Management Board shall:

- (a) provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
- (b) identify the risks to be reported to the Programme Board via the regular risk reports;
- (c) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- (d) ratify or refuse requests to close risks on the Risk Register; and
- (e) identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

## **9 CONTRACT MANAGEMENT MECHANISMS**

9.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.

9.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:

- (a) the identification and management of risks;
- (b) the identification and management of issues; and
- (c) monitoring and controlling project plans.

9.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

## **10 ANNUAL REVIEW**

10.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

- 10.2 The meetings shall be attended by the UK Managing Director of the Supplier and any person considered by the Authority necessary for the review.

## ANNEX 1: SERVICE MANAGEMENT BOARD REPRESENTATION AND STRUCTURE

Authority Members of Service Management Board	[ <input type="checkbox"/> ] [Chairperson]
Supplier Members of Service Management Board	
Start Date for Service Management Board meetings	
Frequency of Service Management Board meetings	
Location of Service Management Board meetings	

### Programme Board Representation and Structure

Authority members of Programme Board	[ <input type="checkbox"/> ] [Chairperson]
Supplier members of Programme Board	
Start date for Programme Board meetings	
Frequency of Programme Board meetings	
Location of Programme Board meetings	

### Change Management Board Representation and Structure

Authority Members of Change Management Board	[ <input type="checkbox"/> ] [Chairperson]
Supplier Members of Change Management Board	
Start Date for Change Management Board meetings	
Frequency of Change Management Board meetings	
Location of Change Management Board meetings	

### Technical Board Representation and Structure

Authority Members of Technical Board	[ <input type="checkbox"/> ] [Chairperson]
Supplier Members of Technical Board	
Start Date for Technical Board meetings	
Frequency of Technical Board meetings	
Location of Technical Board meetings	

### Risk Management Board Representation and Structure

Authority Members for Risk Management Board	[ <input type="checkbox"/> ] [Chairperson]
Supplier Members for Risk Management Board	
Start Date for Risk Management Board meetings	
Frequency of Risk Management Board meetings	
Location of Risk Management Board meetings	



# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 8.2**

### **CHANGE CONTROL PROCEDURE**

## Change Control Procedure

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Authority Change Manager”</b>	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
<b>“Change Request”</b>	a written request for a Contract Change which shall be substantially in the form of Annex 1;
<b>“Change Communication”</b>	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
<b>“Fast-track Change”</b>	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
<b>“Impact Assessment”</b>	an assessment of a Change Request in accordance with Paragraph 5;
<b>“Impact Assessment Estimate”</b>	has the meaning given in Paragraph 4.3;
<b>“Receiving Party”</b>	the Party which receives a proposed Contract Change; and
<b>“Supplier Change Manager”</b>	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

### 2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

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

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
  - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
  - (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
  - (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
  - (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
  - (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

### 3 COSTS

#### 3.1 Subject to Paragraph 3.3:

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

- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
    - (i) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
    - (ii) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.
- 4 CHANGE REQUEST**
- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:
  - (a) The nature of the request for clarification; and
  - (b) The reasonable justification for the request;

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

## **5 IMPACT ASSESSMENT**

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
  - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
  - (ii) the format of Authority Data, as set out in the Services Description;
  - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
  - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.

- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
  - (b) facilitate the Financial Transparency Objectives;
  - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
  - (d) include full disclosure of any assumptions underlying such Impact Assessment;
  - (e) include evidence of the cost of any assets required for the Change; and
  - (f) include details of any new Sub-contracts necessary to accomplish the Change.

## **6 AUTHORITY'S RIGHT OF APPROVAL**

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
  - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
  - (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7 SUPPLIER'S RIGHT OF APPROVAL**

Following an Impact Assessment, if:

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

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

## **8 FAST-TRACK CHANGES**

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

- 8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed [REDACTED] and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

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

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

## **9 OPERATIONAL CHANGE PROCEDURE**

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- (a) have an impact on the business of the Authority;
  - (b) require a change to this Agreement;
  - (c) have a direct impact on use of the Services; or
  - (d) involve the Authority in paying any additional Charges or other costs.
- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“RFOC”) to the Supplier Representative.
- 9.3 The RFOC shall include the following details:
- (a) the proposed Operational Change; and
  - (b) the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.



## 10 COMMUNICATIONS

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

### ANNEX 1: CHANGE REQUEST FORM

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

## ANNEX 2: CHANGE AUTHORISATION NOTE

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

**MODEL AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.3**

**DISPUTE RESOLUTION PROCEDURE**

## Dispute Resolution Procedure

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Counter Notice”</b>	has the meaning given in Paragraph 7.2;
<b>“Expert”</b>	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
<b>“Expert Determination”</b>	determination by an Expert in accordance with Paragraph 6;
<b>“Mediation Notice”</b>	has the meaning given in Paragraph 4.2;
<b>“Mediator”</b>	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
<b>“Multi-Party Dispute”</b>	a Dispute which involves the Parties and one or more Related Third Parties;
<b>“Multi-Party Dispute Representatives”</b>	has the meaning given in Paragraph 9.6;
<b>“Multi-Party Dispute Resolution Board”</b>	has the meaning given in Paragraph 9.6;
<b>“Related Third Party”</b>	<p>a party to:</p> <p>(a) another contract with the Authority or the Supplier which is relevant to this Agreement; or</p> <p>(b) a Sub-contract; and</p>
<b>“Supplier Request”</b>	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

## 2 DISPUTE NOTICES

### 2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

### 2.2 A Dispute Notice:

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

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

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

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

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

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

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

### **3 EXPEDITED DISPUTE TIMETABLE**

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.2(c), 10 Working Days;
  - (b) in Paragraph 5.2, 10 Working Days;
  - (c) in Paragraph 6.2, 5 Working Days; and
  - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

### **4 COMMERCIAL NEGOTIATION**

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Commercial Lead and the Supplier's UK Managing Director.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

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

**5 MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

**6 EXPERT DETERMINATION**

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



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

**6.3 The Expert shall act on the following basis:**

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **7 ARBITRATION**

- 7.1** Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

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

## 8 URGENT RELIEF

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

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

## 9 MULTI-PARTY DISPUTES

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

- (b) the Supplier;
- (c) each Related Third Party involved in the Multi-Party Dispute; and
- (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together “**Multi-Party Dispute Representatives**”).

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

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

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

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

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 8.4**

#### **REPORTS AND RECORDS PROVISIONS**

## Reports and Records Provisions

### 1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft Transparency Reports in accordance with Annex 1.
- 1.2 If the Authority rejects any proposed Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

### 2. OTHER REPORTS

The Authority may require any or all of the following reports:

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

### 2 RECORDS

- 2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “**Records**”):
  - (a) in accordance with the requirements of The National Archives and Good Industry Practice;
  - (b) in chronological order;
  - (c) in a form that is capable of audit; and

- (d) at its own expense.
- 2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 2.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
  - (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
  - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.



## ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
Performance	<p>Within 5 working days of the end of each calendar month, provide a monthly Performance Monitoring Report that demonstrates the required Performance Levels for the Appointment Booking System are being met.</p>	<p>As a minimum, the report will include detailed performance information on:</p> <ul style="list-style-type: none"> <li>- Service Availability</li> <li>- Supplier System Response Times (API response times and own pages)</li> <li>- Fix Times for Service Incidents</li> <li>- Response Times for Service Queries</li> <li>- Reporting of Security Incidents</li> <li>- Summary of all incidents, outages and root cause analysis</li> <li>- Details of any Service Credits due to the Authority where appropriate, including total Service Credits for a 12-month Service Period</li> </ul>	Monthly report

Security	<p>Security incidents related to the service to be reported to DWP within 24 hours of identification.</p> <p>Compliance with Schedule 2.4 (<i>Security Management Plan</i>)</p>	<ul style="list-style-type: none"> <li>- Reporting of security incidents</li> <li>- Progress report on ISMS and ISO 27001 compliance and certification (Supplier and Guarantor)</li> <li>- Progress report on BCDR and Security Management Plan</li> </ul>	<p>Upon incident occurring, and Monthly report on compliance with Schedule 2.4 (<i>Security Management Plan</i>)</p>
Incident Records	<p>For the supplier to ensure that incident records are complete and up to date at all times, and can be provided to the Authority upon request.</p>		<p>As required by the Authority</p>
Root cause analysis	<p>For the supplier to provide root cause analysis reports within 5 days of resolving the incident.</p>		<p>Upon incident occurring</p>
Major sub-contractors	<p>Performance report on Little Fish (UK) Limited as Key Sub-Contractor</p>		<p>Monthly report</p>

## ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

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

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 8.5**

#### **EXIT MANAGEMENT**

## Exit Management

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Emergency Exit”</b>	any termination of this Agreement which is a: <ul style="list-style-type: none"><li>(a) termination of the whole or part of this Agreement in accordance with Clause 33 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to 6 months;</li><li>(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (Termination Rights); or</li><li>(c) wrongful termination or repudiation of this Agreement by either Party;</li></ul>
<b>“Exclusive Assets”</b>	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
<b>“Exit Information”</b>	has the meaning given in Paragraph 3.1;
<b>“Exit Manager”</b>	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
<b>“Net Book Value”</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
<b>“Non-Exclusive Assets”</b>	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
<b>“Ordinary Exit”</b>	any termination of this Agreement which occurs:

	pursuant to Clause 33 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or
	as a result of the expiry of the Initial Term or any Extension Period;
<b>“Registers”</b>	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
<b>“Transferable Assets”</b>	those of the Exclusive Assets which are capable of legal transfer to the Authority;
<b>“Transferable Contracts”</b>	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
<b>“Transferring Contracts”</b>	has the meaning given in Paragraph 6.2(c).

## 2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

### 2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
  - (i) Assets, detailing their:
    - (A) make, model and asset number;
    - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (C) Net Book Value;
    - (D) condition and physical location; and
    - (E) use (including technical specifications); and
  - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
  - (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
  - (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

### **3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
  - (a) details of the Service(s);
  - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - (c) an inventory of Authority Data in the Supplier's possession or control;
  - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;

- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
  - (g) such other material and information as the Authority shall reasonably require, (together, the “Exit Information”).
- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3 The Supplier shall:
  - (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
  - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
- 3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
  - (a) prepare an informed offer for those Services; and
  - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

#### **4 EXIT PLAN**

- 4.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
  - (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
  - (b) complies with the requirements set out in Paragraph 4.2; and
  - (c) is otherwise reasonably satisfactory to the Authority.



- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
  - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
  - (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
  - (d) the management structure to be employed during the Termination Assistance Period;
  - (e) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - (f) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
  - (g) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
  - (h) a timetable and critical issues for providing the Termination Services;
  - (i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
  - (j) how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - (k) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
  - (a) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### **Finalisation of the Exit Plan**

- 4.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

### **5 TERMINATION SERVICES**

#### **Notification of Requirements for Termination Services**

- 5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and
  - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.

- 5.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

#### **Termination Assistance Period**

- 5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;
  - (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
  - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority;
  - (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and
  - (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 5.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

#### **Termination Obligations**

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

- 5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
- (a) cease to use the Authority Data;
  - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
  - (d) return to the Authority such of the following as is in the Supplier's possession or control:
    - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
    - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
    - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
    - (iv) any items that have been on-charged to the Authority, such as consumables;
  - (e) vacate any Authority Premises;
  - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
    - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
    - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(ii).

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

## **6 ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
  - (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
  - (c) terminate, enter into or vary any licence for software in connection with the Services.
- 6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Authority shall provide written notice to the Supplier setting out:
- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
    - (i) which, if any, of:
    - (ii) the Exclusive Assets that are not Transferable Assets; and
    - (iii) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
  - (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

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

which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

- 6.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
  - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 6.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 6.5 Where the Supplier is notified in accordance with Paragraph 6.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.7 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

- 6.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 6.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

## **7 SUPPLIER PERSONNEL**

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

## **8 CHARGES**

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.

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

## **9 APPORTIONMENTS**

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



## ANNEX 1: SCOPE OF THE TERMINATION SERVICES

- 1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);
  - (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
  - (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
  - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
  - (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
  - (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
  - (k) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
  - (l) assisting in establishing naming conventions for any new production site;

- (m) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (n) generating a computer listing of the Software, Software Source Code and instructions in a form and on media reasonably requested by the Authority;
- (o) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (p) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (q) assisting with the loading, testing and implementation of the production databases;
- (r) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (s) in respect of the maintenance and support of the Supplier System, providing historical performance data for the required time period set by the Authority;
- (t) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (u) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (v) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (w) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (x) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

- (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (y) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

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

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

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

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;

- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information.

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

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

**MODEL AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.6**

**BUSINESS CONTINUITY AND DISASTER RECOVERY**

## 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(ii);
<b>“Business Continuity Services”</b>	has the meaning given in Paragraph 4.2(b);
<b>“Disaster”</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period defined in Schedule 2.2 ( <i>Performance Levels</i> ) or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2(a)(iii);
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Related Service Provider”</b>	any person who provides services to the Authority in relation to this Agreement from time to time which persons include as at the Effective Date.

## 2 BCDR PLAN

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

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

2.2 The BCDR Plan shall:

- (a) be divided into three parts:
  - (i) Part A which shall set out general principles applicable to the BCDR Plan;

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

### **3 PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1 Part A of the BCDR Plan shall:
- (a) set out how the business continuity and disaster recovery elements of the Plan link to each other;
  - (b) provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
  - (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
  - (d) detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;

- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
  - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
  - (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

### 3.2 The BCDR Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.



3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

#### **4 BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS**

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- (c) 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 in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

#### **5 DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS**

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;

- (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
  - (i) data centre and disaster recovery site audits;
  - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
  - (iii) identification of all potential disaster scenarios;
  - (iv) risk analysis;
  - (v) documentation of processes and procedures;
  - (vi) hardware configuration details;
  - (vii) network planning including details of all relevant data networks and communication links;
  - (viii) invocation rules;
  - (ix) Service recovery procedures; and
  - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

## **6 REVIEW AND AMENDMENT OF THE BCDR PLAN**

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every 6 months;
  - (b) within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 8; and

- (c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the 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 the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "**Review Report**") setting out:
  - (a) the findings of the review;
  - (b) any changes in the risk profile associated with the Services; and
  - (c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
  - (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
  - (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.
- 7 TESTING OF THE BCDR PLAN**
- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Authority 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 Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority 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 the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
  - (a) the outcome of the test;
  - (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and

(c) the Supplier's proposals for remedying any such failures.

- 7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **8 INVOCATION OF THE BCDR PLAN**

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 Authority promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Authority.

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 8.7**

#### **CONDUCT OF CLAIMS**

## 1 INDEMNITIES

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

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## **2 SENSITIVE CLAIMS**

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a “**Sensitive Claim**”), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

## **3 RECOVERY OF SUMS**

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

## **4 MITIGATION**

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



## **MODEL AGREEMENT SERVICES SCHEDULES**

### **SCHEDULE 9.1**

#### **STAFF TRANSFER**

## Staff Transfer

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Admission Agreement”</b>	The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Fair Deal Employees”</b>	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
<b>“Former Supplier”</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
<b>“Notified Sub-contractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-contractor”</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;

<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer;
<b>“Staffing Information”</b>	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement and gender;</li> <li>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting Party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries and profit sharing arrangements as applicable;</li> <li>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> </ul>

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

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

## 2 INTERPRETATION

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

## **PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 RELEVANT TRANSFERS**

#### **1.1 The Authority and the Supplier agree that:**

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

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

### **2 AUTHORITY INDEMNITIES**

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

- (a) any act or omission by the Authority occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

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

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
  - (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

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

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

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

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



- (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (d) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (e) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (f) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

#### **4 INFORMATION**

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

#### **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

## **6 PENSIONS**

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

## **ANNEX TO PART A: PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority
- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - (b) agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Supplier breaches the Admission Agreement; and
  - (c) agree that notwithstanding sub-paragraph (b), the Supplier shall notify the Authority in the event that it breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

### **2 FUTURE SERVICE BENEFITS**

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

### **3 FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

#### **4 PROVISION OF INFORMATION**

The Supplier and the Authority respectively undertake to each other:

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

#### **5 INDEMNITY**

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

#### **6 EMPLOYER OBLIGATION**

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

#### **7 SUBSEQUENT TRANSFERS**

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

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

## **PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 RELEVANT TRANSFERS**

#### **1.1 The Authority and the Supplier agree that:**

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

#### **1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.**

### **2 FORMER SUPPLIER INDEMNITIES**

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

- (a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

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

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.



- 2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
  - (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

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

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

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

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

#### **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

#### **6 PROCUREMENT OBLIGATIONS**

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

the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **7 PENSIONS**

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

### **ANNEX TO PART B**

#### **PENSIONS**

##### **1 PARTICIPATION**

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Authority:

- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- (b) agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Supplier breaches the Admission Agreement; and
- (c) agree that notwithstanding sub-paragraph (b) the supplier shall notify the Authority in the event that it breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

##### **2 FUTURE SERVICE BENEFITS**

2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.1 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4 PROVISION OF INFORMATION**

The Supplier and the Authority respectively undertake to each other:

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

### **5 INDEMNITY**

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

### **6 EMPLOYER OBLIGATION**

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

## 7 SUBSEQUENT TRANSFERS

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (a) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

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

## **PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 PROCEDURE IN THE EVENT OF TRANSFER**

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

### **2 INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure



that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

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

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

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

2.4 The indemnities in Paragraph 2.1:

- (a) shall not apply to:

- (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

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

### **3 PROCUREMENT OBLIGATIONS**

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

## **PART D: EMPLOYMENT EXIT PROVISIONS**

### **1 PRE-SERVICE TRANSFER OBLIGATIONS**

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

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

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

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

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

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

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

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

- (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

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

- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
    - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-contractor; and



- (b) the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
  - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
  - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
    - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
  - (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
  - (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS**

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 9.2**

#### **KEY PERSONNEL**

### Key Personnel

KEY ROLE	Name of KEY Personnel	Responsibilities/Authorities	Phase of the project during which they will be a MEMBER OF Key Personnel
<b>Commercial Lead (Authority)</b>	[REDACTED]	<b>Commercial lead and designated point of contact for the Model Services Agreement and Combined Schedules</b>	<b>All phases as required</b>
<b>Delivery Manager (Authority)</b>	[REDACTED]	<b>Supplier engagement</b>	<b>Initial integration</b>
<b>Lead Developer (Authority)</b>	[REDACTED]	<b>Lead Developer</b>	<b>Duration of appointment booking integration</b>
<b>Lead Business Analyst (Authority)</b>	[REDACTED]	<b>Business Analyst</b>	<b>Duration of appointment booking integration</b>
<b>Business Analyst (Authority)</b>	[REDACTED]	<b>Business Analyst</b>	<b>Duration of appointment booking integration</b>
<b>Account Manager and Product Owner (Supplier)</b>	[REDACTED]	<b>Account Management, Pre-Sales Technical Engagement, Subject Matter Expertise, Commercial Co-ordination and second point of Escalation</b>	<b>Pre Contract Delivery Post Implementation</b>
<b>Contracts Manager (Supplier)</b>	[REDACTED]	<b>To enable the parties to conclude the commercial arrangements, by facilitating the legal contractual piece</b>	<b>Pre Contract</b>
<b>Director (Supplier)</b>	[REDACTED]	<b>Executive Sponsor on behalf of the Board of Directors, and third (final) point of escalation</b>	<b>Pre Contract Delivery Post Implementation</b>
<b>Technical Director (Supplier)</b>	[REDACTED]	<b>To lead all aspects of the technical design, including software configuration,</b>	<b>Pre Contract Delivery Post Implementation</b>

KEY ROLE	Name of KEY Personnel	Responsibilities/Authorities	Phase of the project during which they will be a MEMBER OF Key Personnel
		infrastructure implementation, and to consult on the design of any customisations	
Delivery Director (Supplier)	[REDACTED]	Responsibility of the overall strategic delivery from contract to project and first point of escalation	Pre Contract Delivery Post Implementation
Business Analyst (Supplier)	[REDACTED]	Requirements capture and project documentation	Pre Contract Delivery Post Implementation
Delivery Manager (Supplier)	[REDACTED]	Delivery of the tactical project (day to day)	Delivery Post Implementation
Service and Delivery Manager (Supplier)	[REDACTED]	Co-ordination of support and compliance reporting	Post Implementation

## **MODEL AGREEMENT FOR SERVICES SCHEDULES**

### **SCHEDULE 10**

#### **GUARANTEE**

**Q-Nomy Inc.**

**- and -**

**The Secretary of State for Work and Pensions**

**DEED OF GUARANTEE**



## DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made on 10<sup>th</sup> of July 2018

### BETWEEN:

- (1) **Q-Nomy Inc.** a company incorporated in the United States of America with US Federal EIN Tax number 14-1861808 and DUNS (US) number 141564380, whose registered office is at 1 Southeast 3rd Avenue, Suite 1410, Miami, Florida 33131, United States of America and registered under the laws of the United States of America ("**Guarantor**");  
in favour of
- (2) **The Secretary of State for Work and Pensions** whose principal office is at Caxton House, Tothill Street, Westminster, London, SW1H 9NA ("**Beneficiary**")

### WHEREAS:

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

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

## 1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
  - (a) "**Guaranteed Agreement**" means the Agreement for **Appointment Booking System - Universal Credit Full Service** made between the Beneficiary and the Supplier on 10<sup>th</sup> of July 2018; and
  - (b) "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.

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

## **2 Guarantee and indemnity**

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

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

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

### **3 Obligation to enter into a new contract**

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

### **4 Demands and Notices**

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

- (a) Q-nomy Inc. whose registered address is 1 Southeast 3rd Avenue, Suite 1410, Miami, Florida 33131, United States of America
- (b) Telephone: [REDACTED] Fax: [REDACTED]
- (c) For the Attention of [REDACTED], Executive Vice President (Q-nomy Inc.)

or the address in England and Wales and facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices, and referred to in Paragraph 15.5.

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

## **5 Beneficiary's protections**

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

- (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
  - (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## 6 Guarantor intent

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

## 7 Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1 of subrogation and indemnity;
- 7.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.3 to prove in the liquidation or insolvency of the Supplier,

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

## 8 Deferral of rights

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
  - (a) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
  - (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.

- 8.2 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Supplier Termination Event:
- (a) exercise any rights it may have to be indemnified by the Supplier;
  - (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
  - (c) claim any set-off or counterclaim against the Supplier.
- 8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9 Representations and warranties**

The Guarantor hereby represents and warrants to the Beneficiary that:

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

- 9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **10 Payments and set-off**

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **11 Guarantor's acknowledgement**

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

## **12 Assignment**

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

## **13 Severance**

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



## **14 Third party rights**

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

## **15 Governing Law**

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 The Guarantor hereby irrevocably designates, appoints and empowers Q-nomy (UK) Limited as a suitable alternative to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.
- 15.6 Any demand or notice served by the Beneficiary in accordance with Paragraph 15.5 shall be in writing, addressed to:
- (a) Q-nomy (UK) Limited whose registered address is Technology House, 48-54 Goldsworth Road, Woking, Surrey, GU21 6LE
  - (b) Telephone: 0333-600-8090 Fax: 01276-53-7363
  - (c) For the Attention of [REDACTED]

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

**EXECUTED as a DEED by**

Q-nomy Inc. acting by [REDACTED], Executive Vice President

**Signed** [REDACTED]

**Date** - 10<sup>th</sup> of July 2018

**Witnessed by** [REDACTED]

**Signed** [REDACTED]

**Date** - 10<sup>th</sup> of July 2018