



Government Procurement Service

SCHEDULE 5

LLM SERVICES AGREEMENT

LETTER OF APPOINTMENT AND CALL-OFF TERMS FOR

ESTATES PROFESSIONAL SERVICES

REFERENCE NUMBER

RM 928

ATTACHMENT 6

FRAMEWORK SCHEDULE 5

Part 1: Pro Forma Letter of Appointment

[letterhead of Contracting Body]

Cushman & Wakefield Debenham Tie Leung Limited (formerly known as Debenham Tie Leung (DTZ) Limited, 125 Old Broad Street, London EC2N 1AR (Company registration number: 02757768)

[Date]

Dear Sirs,

Contract for the provision of Estates Professional Services by Cushman & Wakefield Debenham Tie Leung Limited (formerly known as Debenham Tie Leung (DTZ) Limited, 125 Old Broad Street, London EC2N 1AR (Company registration number: 02757768) (the “Supplier”) to The Secretary of State for Work and Pensions (the “Client”) pursuant to the Estates Professional Service Framework Agreement (RM 928) dated 1 April 2013 between the Minister for the Cabinet Office acting through Government Procurement Service as the “Authority” (1) and the Supplier (2)

1. We refer to the above Estates Professional Services Framework Agreement (the “**Framework Agreement**”). For the purposes of this Letter of Appointment:
 - capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to the Call-Off Terms attached to this Letter of Appointment unless the context otherwise requires;
 - references to Appendices are references to the appendices to this Letter of Appointment; and
 - the Appendices shall form part of this Letter of Appointment.
2. This Letter of Appointment constitutes an Order for the provision by you to us of the Contract Services specified in Annex 1 on the basis of the Contract Charges set out in Annex 2 and, save as varied and/or supplemented pursuant to the provisions set out in Annex 3, in accordance with the Call-Off Terms.
3. The Supplier’s representative with overall responsibility for the supply of the Contract Services is **REDACTED**
4. The Client’s Representative for the purpose of the Contract is **REDACTED**; and any disputes in relation to the Contract shall be escalated as follows:

For the Client: **REDACTED** And

For the Supplier: **REDACTED**
5. Payments to the Supplier in respect of the Contract Services shall be made to the following bank account of the Supplier: **REDACTED**

6. Account name: REDACTED

7. For the purposes of the Contract, the address of each Party is:

- for the Client:

The Secretary of State for Work and Pensions, Caxton House, Tothill Street, London SW1H 9WA
REDACTED

- for the Supplier:

Cushman & Wakefield Debenham Tie Leung Limited, 1 Colmore Square, Birmingham
REDACTED

Please would you sign and return the attached duplicate of this Letter of Appointment with the acknowledgement signed by a partner or director of your firm.

You should be aware that by signing and returning this Letter of Appointment you will have entered into a legally binding contract with us to supply the Contract Services specified in Annex 1 and represent and warrant that you have carried out a conflict check in relation to such contract that revealed no conflicts of interest.

Yours faithfully

For and on behalf of The Secretary of State for Work and Pensions

Duplicate copy to have the following signature block added:

I hereby confirm receipt of the above Letter of Appointment and the agreement of REDACTED Cushman & Wakefield Debenham Tie Leung Limited (formerly known as Debenham Tie Leung (DTZ) Limited) to provide to The Secretary of State for Work and Pensions the Services as specified in the Letter of Appointment in accordance with its terms.

Signed:

Date:

Name:

Status:

FRAMEWORK SCHEDULE 5

Part 2 – Call-Off Terms

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	7
2.	SUPPLY OF CONTRACT SERVICES	11
3.	PAYMENT AND CHARGES.....	13
4.	LIABILITY AND INSURANCE	14
5.	INTELLECTUAL PROPERTY RIGHTS.....	16
6.	PROTECTION OF INFORMATION.....	17
7.	WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS.....	22
8.	TERMINATION	24
9.	CONSEQUENCES OF EXPIRY OR TERMINATION	27
10.	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES	28
11.	PREVENTION OF BRIBERY AND CORRUPTION	28
12.	NON-DISCRIMINATION	29
13.	PREVENTION OF FRAUD.....	30
14.	TRANSFER AND SUB-CONTRACTING.....	30
15.	WAIVER.....	31
16.	CUMULATIVE REMEDIES	31
17.	FURTHER ASSURANCES	31
18.	SEVERABILITY	31
19.	SUPPLIER'S STATUS.....	32
20.	ENTIRE AGREEMENT	32

21.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT	32
22.	NOTICES.....	33
23.	DISPUTES AND LAW.....	33
24.	DISPUTE RESOLUTION	33
25.	DISASTER RECOVERY AND BUSINESS CONTINUITY	34
26.	REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES 34	
27.	RECORDS AND AUDIT ACCESS	35
28.	VARIATION	36
29.	MISTAKES IN INFORMATION	37
	SCHEDULE 1 TO CALL-OFF TERMS.....	38
	SCHEDULE 2: VARIATION FORM.....	50
	SCHEDULE 3: DISASTER RECOVERY AND BUSINESS CONTINUITY	51
	SCHEDULE 4: ADDITIONAL/ OPTIONAL CLAUSES	56
	SCHEDULE 5: SECURITY MANAGEMENT PLAN.....	61
	ANNEX 1 – CONTRACT SERVICES	67
	ANNEX 2 - CONTRACT CHARGES.....	84
	ANNEX 3 (VARIATIONS AND/OR SUPPLEMENTS TO THE CALL-OFF TERMS).....	95
	SCHEDULE 6 - IMPLEMENTATION SERVICES.....	125
	SCHEDULE 7 - STAFF TRANSFER	130
	SCHEDULE 7 - PART A: TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF CONTRACT SERVICES	135
	SCHEDULE 7 - ANNEX TO PART A: PENSIONS.....	140
	SCHEDULE 7 - PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF CONTRACT SERVICES	142
	SCHEDULE 7 - ANNEX TO PART B PENSIONS.....	144
	SCHEDULE 7- PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF CONTRACT SERVICES.....	146
	SCHEDULE 7 - PART D: EMPLOYMENT EXIT PROVISIONS.....	148
	SCHEDULE 7 - ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS	155
	SCHEDULE 8 - INSURANCE	156

SCHEDULE 9 - DEPARTMENT FOR WORK AND PENSIONS' POLICIES.....	160
SCHEDULE 10 - SUPPLIER EXIT	161
SCHEDULE 11 - ASSET (DEVELOPMENT GAIN) MANAGEMENT	172
SCHEDULE 12 – GOVERNANCE	174
SCHEDULE 13 – GAIN SHARE	177
SCHEDULE 14 - FINANCIAL DISTRESS	182
SCHEDULE 15 - VALUES AND BEHAVIOURS	186
SCHEDULE 16 - SECURITY MANAGEMENT.....	187

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

“Annex”	means the annexes to these Call Off Terms as attached to the Letter of Appointment;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Government Procurement Service (formerly Buying Solutions), a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
“BCDR Plan”	has the meaning given to it in paragraph 1.3 of Schedule 3;
“Confidential Information”	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
“Contract”	means the written agreement between the Customer and the Supplier consisting of the Letter of Appointment, these Call-Off Terms (save to the extent varied by the Letter of Appointment) and any other documents referred to in either of them;
“Contract Charges”	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract for the full and proper performance by the Supplier of the Contract Services;
“Contract Commencement Date”	means 18 September 2017;
“Contract Mediator”	has the meaning set out in Clause 24.5.1;
“Contract Services”	means the Services to be supplied by the Supplier to the Customer as set out in the Letter of Appointment;
“Change of Control”	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
“Customer”	means the Contracting Body that issues the Letter of Appointment;
"Customer's Confidential Information"	means all Customer's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
“Customer Data”	shall have the meaning given to it in the Annex;

"Customer's Personal Data"	means the Personal Data supplied by the Customer to the Supplier for the purposes of or in connection with the Contract;
"Customer Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Customer's Representative"	means the representative of the Customer appointed by the Customer from time to time in relation to the Contract and notified to the Supplier;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Controller", "Data Processor"	shall have the same meaning as set out in the Data Protection Act 1998;
"Disaster"	shall have the meaning given to it in the Annex;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Framework Agreement"	means the framework agreement between the Authority and the Supplier referred to in the Letter of Appointment;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Goods"	means the goods to be supplied in connection with or ancillary to the supply of Services under this contract; and specified within the description of services at Part 1 of Framework Schedule 1 (Services);
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the requirements of the Codes of Practice and guidance issued by any relevant professional body and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in providing Services similar to the Contract Services;
"Information"	has the meaning given under section 84 of the FOIA;
"Key Performance Indicators" or "KPIs"	mean the indicators set out in the Annex;

"Key Personnel"	means any individuals identified as such in the Letter of Appointment and any replacements for such individuals that may be agreed between the Parties from time to time in accordance with Clause 2.3.3;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"Letter of Appointment"	means the letter from the Customer to the Supplier dated (including its appendices) containing the order to provide the Contract Services;
"Material Breach"	means a material breach of the Contract;
"Party"	means the Supplier or the Customer and "Parties" shall mean both of them;
"Persistent Failure"	means any two (2) or more failures by the Supplier in any rolling period of twelve (12) Months to comply with obligations in respect of the Contract Services under with the Contract;
"Pre-Existing Intellectual Property Rights" or "Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Customer or the Supplier prior to or independently of the performance by the Customer or the Supplier of their obligations under this Contract;
"Process" or "Processing"	shall have the same meaning as set out in the Data Protection Act 1998;
"Request for Information"	means a request for information or an apparent request relating to this Contract or the provision of the Contract Services or an apparent request for such information under the FOIA or the Environmental Information Regulations;
"Service Levels"	means the service levels set out in paragraph 2 of Schedule 1 and the Annex;
"Supplier"	means the supplier to whom the Letter of Appointment is addressed;
"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including all IPRs, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;
"Supplier's Staff"	means all persons employed by the Supplier and/or any Sub-Contractor to perform the Supplier's obligations under the Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Supplier's obligations under the Contract;

"Sub-Contract"	means the Supplier's contract with a Sub-Contractor whereby the Sub-Contractor agrees to provide to the Supplier the Contract Services or any part thereof or facilities, services necessary for the provision of the Contract Services or any part thereof necessary for the management, direction or control of the Contract Services or any part thereof;
"Sub-Contractor"	means any person appointed by the Supplier to carry out any of the Supplier's obligations under the Contract; and

1.2 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 the Annex forms part of these Call-Off Terms and shall have effect as if set out in full in the body of these Call-Off Terms and any reference to these Call-Off Terms includes the Annex;
- 1.2.6 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "Clauses", "Schedules" and the "Annex" are, unless otherwise provided, references to the clauses of, Schedules to and the Annex to these Call-Off Terms and references to "paragraphs" are, unless otherwise provided, references to paragraphs of the Schedules and/or Annex in which the references are made;
- 1.2.9 terms or expressions contained in the Contract which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the Framework Agreement;
- 1.2.10 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Letter of Appointment, these Call-Off Terms, any other document referred to in the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- 1.2.11.1 the Framework Agreement (excluding Framework Schedule 5 (Letter of Appointment and Call-Off Terms));
- 1.2.11.2 the Letter of Appointment (including the Annex);
- 1.2.11.3 these Call-Off Terms;
- 1.2.11.4 the Schedules to the Call-Off Terms; and
- 1.2.11.5 any other document referred to in the Contract.

2. SUPPLY OF CONTRACT SERVICES

2.1 Contract Services

2.1.1 The Supplier shall supply the Contract Services to the Customer in accordance with the provisions of the Contract including the Service Levels and Key Performance Indicators (if any) stipulated in the Letter of Appointment and Schedule 1 (Service Levels).

2.1.2 The Supplier shall:

- 2.1.2.1 comply with all reasonable instructions given to the Supplier and its Staff by the Customer in relation to the Contract Services from time to time, including reasonable instructions to reschedule or alter the Contract Services;
- 2.1.2.2 immediately report to the Customer's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 2.1.3.1;
- 2.1.2.3 co-operate with the Customer and the Customer's other professional advisers in relation to the Contract Services as required by the Customer; and
- 2.1.2.4 comply with the Customer's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Supplier in writing by the Customer.

2.1.3 The Supplier shall not:

- 2.1.3.1 knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer exists in relation to the Contract Services; or
- 2.1.3.2 incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without the Customer's prior written agreement; or
- 2.1.3.3 without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Contract Services; or
- 2.1.3.4 pledge the credit of the Customer in any way; or

- 2.1.3.5 engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer.
- 2.1.4 The Customer reserves the right to select more than one supplier from this Framework at any one time to work on and deliver a campaign or project.
- 2.1.5 The Supplier may be expected to work with other suppliers from this Framework, or any of the Customer's other frameworks to deliver the Contract Services required.
- 2.1.6 The Supplier may be expected to deliver specific requirements in association with other named suppliers.
- 2.1.7 The Supplier may be expected to deliver specific requirements in association with the Customer's in house teams. This may include a requirement for the Supplier's Key Personnel to be based at the Customer premises for an agreed period of time.
- 2.1.8 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
- 2.1.9 The Supplier accepts that the Customer shall have the right after consultation with the Supplier to require the removal from involvement in the Contract Services of any person engaged in the performance of the Contract Services if in the Customer's reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Contract Services.
- 2.1.10 Where the Supplier is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Supplier's obligations under the Contract.
- 2.1.11 Time shall not be of the essence in this Contract unless stipulated by the Customer in the Letter of Appointment, in which case the provisions of clause 30 of Schedule 4 (Additional Optional Clauses) of this Contract will apply.

2.2 **Term of Contract**

- 2.2.1 This Contract shall take effect on the Contract Commencement Date and shall expire on the date specified in the Annex unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law.

2.3 **Key Personnel**

- 2.3.1 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Contract Services to the Customer. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Letter of Appointment and such other roles as may be necessary or desirable for the purposes of the Contract or as may be agreed between the Parties from time to time.
- 2.3.2 The Key Personnel shall not be released by the Supplier from supplying the Contract Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment/partnership or other extenuating circumstances.
- 2.3.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Contract.

- 2.3.4 The Customer shall not unreasonably withhold its agreement under Clauses 2.3.2 or 2.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- 2.3.5 If requested by the Customer, the Supplier shall procure that Key Personnel attend transaction review meetings at no cost to the Customer during the term of the Contract and upon its conclusion.

3. PAYMENT AND CHARGES

3.1 Contract Charges and VAT

- 3.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges and fees in accordance with Clause 3.2 (Payment).
- 3.1.2 The Customer shall, in addition to the Contract Charges and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Contract Services supplied.
- 3.1.3 The provisions of paragraphs 6 and 7 of Framework Schedule 2 (Charging Structure) of the Framework Agreement shall apply in relation to the Contract Services.
- 3.1.4 If at any time before the Contract Services have been delivered in full the Supplier reduces its Framework Prices for any Contract Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement with the result that the Framework Prices are lower than the Contract Charges, the Contract Charges for the Contract Services shall automatically be reduced so as to be equal to the Framework Prices.
- 3.1.5 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 3.1.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

3.2 Payment

- 3.2.1 The Customer shall pay all sums properly due and payable to the Supplier in respect of the Contract Services in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.
- 3.2.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Contract Services provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the Customer to substantiate the invoice.
- 3.2.3 The Supplier shall ensure that all invoices submitted to the Customer for Contract Services are exclusive of the Management Charge (as defined in the Framework Agreement) payable to the Authority in respect of the Contract Services. The Supplier shall not be entitled to increase the Contract Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.
- 3.2.4 The Supplier shall make any payments due to the Customer without any deduction

whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

- 3.2.5 Subject always to the provisions of Clause 14, if the Supplier enters into a Sub-Contract in respect of the Contract Services, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 3.2.6 The Supplier shall not suspend the supply of the Contract Services unless the Supplier is entitled to terminate the Contract under Clause 8.2.7 on the grounds of the Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Contract Services.
- 3.2.7 The Supplier shall accept the Government Procurement Card (or such equivalent payment method as is specified by the Customer) as a means of payment for the Contract Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 3.2.8 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

3.3 Recovery of Sums Due

- 3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract.
- 3.3.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

4. LIABILITY AND INSURANCE

4.1 Liability

- 4.1.1 Neither Party excludes or limits its liability for:
 - 4.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - 4.1.1.2 fraud or fraudulent misrepresentation by it or its employees; or
 - 4.1.1.3 wilful default.
- 4.1.2 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Contract Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under the Contract against that individual or such service company in respect of the

Contract Services save in the case of fraud or any liability for death or personal injury. Nothing in this Clause 4.1.2 shall in any way limit the liability of the Supplier in respect of the Contract Services, and such liability shall be uncapped unless otherwise specified in the Letter of Appointment.

- 4.1.3 The Supplier shall fully indemnify and keep the Customer fully indemnified on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Contract Services or the performance or non-performance by the Supplier of its obligations under the Framework Agreement and the Customer's financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused by any act or omission of the Supplier.
- 4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:
 - 4.1.4.1 loss of profits;
 - 4.1.4.2 loss of business;
 - 4.1.4.3 loss of revenue;
 - 4.1.4.4 loss of or damage to goodwill;
 - 4.1.4.5 loss of savings (whether anticipated or otherwise); and/or
 - 4.1.4.6 any indirect, special or consequential loss or damage.
- 4.1.5 The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense) which may be recoverable by the Customer:
 - 4.1.5.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
 - 4.1.5.2 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services; and
 - 4.1.5.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.
- 4.1.6 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional supplier of the Contract Services employed in a customer/supplier relationship.
- 4.1.7 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.

4.2 Insurance

- 4.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Customer arising from any advice given or omitted to be given by the Supplier under the Contract or otherwise in connection with the provision of the Contract Services. Such insurance shall be maintained for so long as the Supplier may have any liability to the Customer.
- 4.2.2 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability arising in respect of the risks referred to in Clause 4.2.1.
- 4.2.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by Clause 4.2.1, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 4.2.4 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.
- 4.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 4.2.6 Where there are Goods supplied, in connection with the supply of Services under this Contract, the minimum insurance period shall be six (6) years following the expiration or earlier termination of this Contract.
- 4.2.7 The standard minimum levels of insurance cover have been set in the Framework Agreement. Any variation to those levels are set out in the Letter of Appointment.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights ("IPR") created in connection with the supply of the Contract Services under this Contract shall vest in the Supplier who shall grant to the Customer a non-exclusive, unlimited, irrevocable license to use and exploit the same, without further payment to the Supplier.
- 5.2 The Supplier shall grant a licence, for the benefit of the Customer and the Authority, to permit them to use and/or exploit the IPR created in connection with the supply of the Contract Services under this Contract, for the benefit of all Contracting Bodies, without further payment to the Supplier.
- 5.3 Nothing in this Contract shall interfere with the rights and responsibilities of the Supplier of any Pre-Existing IPR.
- 5.4 Subject to Clause 5.1 and save as expressly granted elsewhere under the Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.
- 5.5 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Customer

and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").

- 5.6 If a Claim arises, the Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 5.6.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 5.6.2 shall take due and proper account of the interests of the Customer;
 - 5.6.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
 - 5.6.4 shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).
- 5.7 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without the prior written approval of the Customer.

6. PROTECTION OF INFORMATION

6.1 Protection of Personal Data

- 6.1.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer's Personal Data.
- 6.1.2 The Supplier shall:
 - 6.1.2.1 Process the Customer's Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Customer to the Supplier during the term of the Contract);
 - 6.1.2.2 Process the Customer's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Contract Services or as is required by Law or any Regulatory Body;
 - 6.1.2.3 implement appropriate technical and organisational measures to protect the Customer's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer's Personal Data and having regard to the nature of the Customer's Personal Data which is to be protected;
 - 6.1.2.4 take reasonable steps to ensure the reliability of all members of the Supplier's Staff who have access to the Customer's Personal Data;
 - 6.1.2.5 obtain the Customer's prior written approval in order to transfer all or any of the Customer's Personal Data to any Sub-Contractors for the provision of the Contract Services;

- 6.1.2.6 ensure that all members of the Supplier's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 6.1;
- 6.1.2.7 ensure that none of the Supplier's Staff publish, disclose or divulge any of the Customer's Personal Data to any third party unless directed in writing to do so by the Customer;
- 6.1.2.8 notify the Customer within five (5) Working Days if the Supplier receives:
 - 6.1.2.9.1 a request from a Data Subject to have access to the Customer's Personal Data relating to that person; or
 - 6.1.2.9.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 6.1.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to the Customer's Personal Data, including by:
 - 6.1.2.9.3 providing the Customer with full details of the complaint or request;
 - 6.1.2.9.4 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - 6.1.2.9.5 providing the Customer with any Customer's Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - 6.1.2.9.6 providing the Customer with any information requested by the Customer;
 - 6.1.2.9.7 permit or procure permission for the Customer or the Customer's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under the Contract;
 - 6.1.2.9.8 provide a written description of the technical and organisational methods employed by the Supplier for Processing the Customer's Personal Data (within the timescales required by the Customer); and
 - 6.1.2.9.9 not Process or otherwise transfer any Customer Data outside the European Economic Area without the prior written consent of the Customer which may be given on such terms as the Customer in its discretion thinks fit.
- 6.1.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

- 6.1.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Customer's Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 6.1.5 In the event that through any failure by the Supplier to comply with its obligations under the Contract, Customer's Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

6.2 Confidentiality

- 6.2.1 Except to the extent set out in this Clause 6.2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
- 6.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 6.2.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 6.2.2 Clause 6.2.1 shall not apply to the extent that:
- 6.2.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 6.4 (Freedom of Information); or
 - 6.2.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
 - 6.2.2.3 such information was obtained from a third party without obligation of confidentiality; or
 - 6.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 6.2.2.5 it is independently developed without access to the other Party's Confidential Information.
- 6.2.3 The Supplier may only disclose the Customer's Confidential Information to those members of the Supplier's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.
- 6.2.4 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of the Contract.
- 6.2.5 At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.

- 6.2.6 Nothing in the Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained pursuant to clause 14 of the Framework Agreement):
- 6.2.6.1 to any Crown body or any other Contracting Body on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Customer save as required by Law;
 - 6.2.6.2 to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with the Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
 - 6.2.6.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 6.2.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 6.2.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 6.2.6 is made aware of the Customer's obligations of confidentiality.
- 6.2.8 Nothing in this Clause 6.2 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 6.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 6.2.10 The Supplier shall, at all times during and after the performance of the Contract, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 6.2 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

6.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989

- 6.3.1 The Supplier shall comply with and shall ensure that the Supplier's Staff comply with, the provisions of:
- 6.3.1.1 the Official Secrets Acts 1911 to 1989; and
 - 6.3.1.2 section 182 of the Finance Act 1989.

6.4 Freedom of Information

- 6.4.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure

obligations.

- 6.4.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 6.4.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 6.4.2.2 provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - 6.4.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 6.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 6.4.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 6.4.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 6.2) the Customer may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Contract Services:
- 6.4.5.1 in certain circumstances without consulting the Supplier; or
 - 6.4.5.2 following consultation with the Supplier and having taken the Supplier's views into account,
- provided always that where Clause 6.4.5.1 applies the Customer shall, in accordance with any recommendations of the Ministry of Justice Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure;
- 6.4.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer on reasonable notice to inspect such records as requested from time to time.
- 6.4.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 6.5.

6.5 Transparency

- 6.5.1 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

- 6.5.2 Notwithstanding any other term of the Contract, the Supplier hereby gives consent to the Customer to publish the Contract to the general public in its entirety (subject only to redaction of any Information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Contract agreed from time to time.
- 6.5.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 6.5.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish the Contract.

7. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

7.1 The Supplier warrants, represents and undertakes to the Customer that:

- 7.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
- 7.1.2 the Contract is executed by a duly authorised representative of the Supplier;
- 7.1.3 in entering the Contract it has not committed any fraud;
- 7.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 7.1.5 all information, statements and representations contained in the Supplier's tender or other submission to the Customer for the award of the Contract Services are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 7.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 7.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 7.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 7.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 7.1.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer; and

- 7.1.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services.
- 7.2 The Supplier warrants, represents and undertakes to the Customer that:
- 7.2.1 it has read and fully understood the Letter of Appointment and these Call-Off Terms and is capable of performing the Contract Services in all respects in accordance with the Contract;
 - 7.2.2 the Supplier (and each of its Sub-Contractors) has all staff, equipment and experience necessary for the proper performance of the Contract Services; and
 - 7.2.3 it will at all times:
 - 7.2.3.1 perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
 - 7.2.3.2 in conformance with the relevant specifications set out in the Letter of Appointment and (if applicable) the manufacturer's specifications and documentation;
 - 7.2.3.3 comply with all the Service Levels as specified by the Customer and meet or exceed the Service Levels;
 - 7.2.3.4 carry out the Contract Services within the timeframe agreed with the Customer; and
 - 7.2.3.5 without prejudice to its obligations under Clause 2.3 (Key Personnel), ensure to the satisfaction of the Customer that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Suppliers Staff as shall be necessary for the proper performance of the Contract Services;
 - 7.2.3.6 where the Goods are supplied in connection with or ancillary to the Services, those Goods are and will continue to be, throughout the anticipated or stipulated lifetime of the same:
 - 7.2.3.6.1 of satisfactory quality and fit for purpose;
 - 7.2.3.6.2 free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period;
 - 7.2.3.6.3 where such Goods are supplied they shall be supplied with full title guarantee;
 - 7.2.3.6.4 consistent with any requirements set out or referred to in any Letter of Appointment relating to quality and security and the Supplier shall ensure that all aspects of the said Goods are the subject of quality management systems and risk mitigation measures; and
 - 7.2.3.6.5 serviceable (and, in this connection, that sufficient spare parts shall be readily available for the said anticipated or stipulated lifetime in conformance with the relevant specifications set out in the relevant Letter of Appointment and (if applicable) the manufacturer's specifications and documentation.

- 7.3 The Supplier shall promptly notify the Customer in writing:
- 7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;
 - 7.3.2 if the Supplier undergoes a Change of Control; and
 - 7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 7.4 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.
- 7.5 The Supplier acknowledges and agrees that:
- 7.5.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Customer into entering into the Contract; and
 - 7.5.2 the Customer has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

8. TERMINATION

8.1 Termination on Insolvency

- 8.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier if:
- 8.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
 - 8.1.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 8.1.1.3 a petition is presented for the winding-up of the Supplier (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986; or
 - 8.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets; or
 - 8.1.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days;
 - 8.1.1.6 an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or

- 8.1.1.7 if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 8.1.1.8 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 8.1.1.9 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 8.1.1.10 the Supplier being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 8.1.1.11 the Supplier being an individual or any partner or partners in the Supplier who together are able to exercise control of the Supplier where the Supplier is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or
- 8.1.1.12 any event similar to those listed in Clauses 8.1.1.1 to 8.1.1.11 occurs under the law of any other jurisdiction; or
- 8.1.1.13 in the reasonable opinion of the Customer, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
 - 8.1.1.13.1 adversely impacts on the Supplier's ability to supply the Contract Services in accordance with the Contract; or
 - 8.1.1.13.2 could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with the Contract; or
 - 8.1.1.13.3 the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier.

8.2 Termination on Material Breach, Persistent Failure or Grave Misconduct etc.

- 8.2.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier:
 - 8.2.1.1 if the Supplier commits a Material Breach and if:
 - 8.1.1.13.4 the Supplier has not within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice to the Supplier specifying the Material Breach and requesting it to be remedied:

8.1.1.13.5 remedied the Material Breach; and

8.1.1.13.6 put in place measures to ensure that such Material Breach does not recur,

in each case to the satisfaction of the Customer; or

8.1.1.13.7 the Material Breach is not, in the opinion of the Customer, capable of remedy; or

8.2.1.2 if a Persistent Failure has occurred; or

8.2.1.3 if Grave Misconduct has occurred; or

8.2.1.4 if the Supplier breaches any of Clause 6.1 (Protection of Personal Data), Clause 6.2 (Confidentiality), Clause 6.3 (Official Secrets Acts 1911 to 1989), Clause 7 (Warranties, Representations and Undertakings), Clause 11 (Prevention of Bribery and Corruption), Clause 12 (Non Discrimination), Clause 13 (Prevention of Fraud) and Clause 14 (Transfer and Sub-Contracting); or

8.2.1.5 in the event of conviction for dishonesty of the Supplier (if an individual) or any one or more of the Supplier's directors, partners or members (if the Supplier is a firm or firms) by a court.

8.2.2 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within five (5) calendar days from the receipt of a such notice, the Supplier may terminate the Contract by ten (10) Working Days' written notice to the Customer.

8.3 Termination on Change of Control

8.3.1 The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

8.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

8.3.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control, but shall not be permitted to terminate where the Customer's written consent to the continuation of the Contract was granted prior to the Change of Control.

8.4 Termination on Notice

8.4.1 The Customer shall have the right to suspend the Contract with immediate effect at any time by giving written notice to the Supplier and to terminate the Contract with immediate effect by giving written notice to the Supplier at any time.

8.5 Termination of Framework Agreement

8.5.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

8.6 Partial Termination

8.6.1 Where the Customer is entitled to terminate the Contract pursuant to this Clause 8,

the Customer shall be entitled to terminate all or part of the Contract provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.

9. CONSEQUENCES OF EXPIRY OR TERMINATION

- 9.1 Subject to Clause 9.2, where the Customer terminates the Contract pursuant to Clause 8 (Termination) and then makes other arrangements for the supply of the Contract Services:
- 9.1.1 the Customer may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer in securing the Contract Services in accordance with the requirements of the Contract;
 - 9.1.2 the Customer shall take all reasonable steps to mitigate such additional expenditure; and
 - 9.1.3 no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.
- 9.2 Clause 9.1 shall not apply where the Customer terminates the Contract:
- 9.2.1 solely pursuant to Clause 8.4 or Clause 8.5; or
 - 9.2.2 if termination pursuant to Clause 8.5 occurs as a result of termination of the Framework Agreement pursuant to the provisions of the Framework Agreement clauses 25.11 (Termination on Insolvency), 25.13 (Termination by the Authority on Notice) or 25.17 (Partial Termination) thereof.
- 9.3 On the termination of the Contract for any reason, the Supplier shall, at the request of the Customer and at the Supplier's cost:
- 9.3.1 immediately return to the Customer all Confidential Information and the Customer's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services;
 - 9.3.2 except where the retention of Customer's Personal Data is required by Law, promptly destroy all copies of the Customer Data and provide written confirmation to the Customer that the data has been destroyed;
 - 9.3.3 immediately deliver to the Customer in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Customer in connection with the Contract provided to the Supplier;
 - 9.3.4 vacate, and procure that the Supplier's Staff vacate, any premises of the Customer occupied for the purposes of providing the Contract Services;
 - 9.3.5 return to the Customer any sums prepaid in respect of the Contract Services not provided by the date of expiry or termination (howsoever arising); and
 - 9.3.6 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Customer or any replacement Supplier to conduct due

diligence.

9.4 Not Used.

9.5 Save as otherwise expressly provided in the Contract:

9.5.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

9.5.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under the following Clauses: Clause 3 (Payment and Charges); Clause 4 (Liability and Insurance); Clause 5 (Intellectual Property Rights); Clause 6.1 (Protection of Personal Data); Clause 6.2 (Confidentiality); Clause 6.3 (Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989); Clause 6.4 (Freedom of Information); Clause 11 (Prevention of Bribery and Corruption); Clause 13 (Prevention of Fraud); Clause 21 (Contracts (Rights of Third Parties) Act); Clause 23.1 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.

10. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

10.1 The Supplier shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Contract in any way without the Customer's prior written approval and shall take reasonable steps to ensure that the Supplier's Staff and professional advisors comply with this Clause 10. Any such press announcements or publicity proposed under this Clause 10 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

10.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer including any examination of the Contract by the auditors.

10.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

11. PREVENTION OF BRIBERY AND CORRUPTION

11.1 The Supplier shall not:

11.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Contract; or

11.1.2 engage in, and shall procure that all the Supplier's Staff or any person acting on the Supplier's behalf shall not commit, in connection with the Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.

11.2 The Supplier warrants, represents and undertakes that it has not:

11.2.1 paid commission or agreed to pay commission to the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer in connection with the Contract; and

- 11.2.2 entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of the Contract.
- 11.3 The Supplier shall:
- 11.3.1 in relation to the Contract, act in accordance with the Ministry of Justice Guidance;
 - 11.3.2 immediately notify the Customer if it suspects or becomes aware of any breach of this Clause 11;
 - 11.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 11 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
 - 11.3.4 if so required by the Customer, within twenty (20) Working Days of the Contract Commencement Date, and annually thereafter, certify to the Customer in writing of the compliance with this Clause 11 by the Supplier, the Supplier's Staff and all persons associated with it or its Sub-Contractors or other persons who are supplying the Contract Services in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - 11.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent the Supplier and any of the Supplier's Staff or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 11.4 If the Supplier, any member of the Supplier's Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:
- 11.4.1 this Clause 11; or
 - 11.4.2 the Bribery Act 2010 in relation to the Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,
- the Customer shall be entitled to terminate the Contract by written notice with immediate effect.
- 11.5 Without prejudice to its other rights and remedies under this Clause 11, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:
- 11.5.1 the amount of value of any such gift, consideration or commission; and
 - 11.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 11.

12. NON-DISCRIMINATION

- 12.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 12.2 The Supplier shall take all reasonable steps to secure the observance of Clause 12.1 by all the

Supplier's Staff employed in the execution of the Contract.

13. PREVENTION OF FRAUD

- 13.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraud by the Supplier and any member of the Supplier's Staff.
- 13.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or any member of the Supplier's Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

13.3 If:

- 13.3.1 the Supplier breaches any of its obligations under Clause 13.1 and Clause 13.2; or
- 13.3.2 the Supplier or any member of the Supplier's Staff commits any fraud in relation to the Contract or any other contract with the Customer or any other person,

without prejudice to any rights of termination, the Customer may recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full against any and all losses sustained by the Customer in consequence of the relevant breach or commission of fraud, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Contract Services and any additional expenditure incurred by the Customer in relation thereto.

14. TRANSFER AND SUB-CONTRACTING

- 14.1 The Supplier shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, the Contract or any part of it without the Customer's prior written consent. The Customer has consented to the engagement of any Sub-Contractors specifically identified in the Letter of Appointment.

- 14.2 The Supplier shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.

- 14.3 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- 14.3.1 any other Contracting Body; or
- 14.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- 14.3.3 any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

- 14.4 The Customer may, if it so chooses, nominate the sub-contractors to be used for specific Contract Services or contract with them directly. The Customer will consult fully with the Supplier before exercising this right.

- 14.5 The Customer may, if it chooses, use its in-house resources, business units and other framework agreements to deliver specific services. The Customer will consult fully with the Supplier before exercising this right.

- 14.6 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 14.7, affect the validity of the Contract. In such circumstances, the

Contract shall bind and inure to the benefit of any successor body to the Customer.

- 14.7 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 14.3 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause any such body being referred to as a "**Transferee**"):
- 14.7.1 the rights of termination of the Customer in Clause 8 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
- 14.7.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.
- 14.8 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 14.9 For the purposes of Clause 14.7 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

15. WAIVER

- 15.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 15.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 22 (Notices).
- 15.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

16. CUMULATIVE REMEDIES

- 16.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

17. FURTHER ASSURANCES

- 17.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

18. SEVERABILITY

- 18.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable

provision eliminated.

- 18.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

19. SUPPLIER'S STATUS

- 19.1 At all times during the term of the Contract the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

20. ENTIRE AGREEMENT

- 20.1 The Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.
- 20.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.
- 20.3 The Supplier acknowledges that it has:
- 20.3.1 entered into the Contract in reliance on its own due diligence alone; and
 - 20.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of the Contract.
- 20.4 Nothing in Clauses 20.1 and 20.2 shall operate:
- 20.4.1 to exclude fraud or fraudulent misrepresentation; or
 - 20.4.2 to limit the rights of the Customer pursuant to clause 33 of the Framework Agreement (Rights of Third Parties).
- 20.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

- 21.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 21.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 21.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Contract or any one or more Clauses of it.
- 21.3 Without prejudice to the Customer's rights as a Contracting Body under clause 33 of the Framework Agreement, the Supplier agrees that the Customer may enforce any of the provisions of the Framework Agreement referred to in clause 33.2 of the Framework Agreement and the Framework Schedule 12 as if they were terms of the Contract (reading references in those

provisions to Contracting Bodies and the Supplier as references to the Customer and the Supplier respectively).

22. NOTICES

- 22.1 Except as otherwise expressly provided in the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless given or made in writing by or on behalf of the Party sending the communication.
- 22.2 Any notice or other communication given or made by either Party to the other shall:
- 22.2.1 be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and
 - 22.2.2 unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:
 - 22.2.3 if delivered personally, at the time of delivery;
 - 22.2.4 if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered;
 - 22.2.5 if sent by electronic mail, two (2) Working Days after posting of a confirmation letter; and
 - 22.2.6 if sent by facsimile, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 9:00 hours on the next Working Day and provided that at time of transmission of the facsimile an error-free transmission report is received by the Party sending the communication.
- 22.3 For the purposes of Clause 22.2, the address, email address and fax number of each Party shall be the address, email address and fax number specified in the Letter of Appointment.
- 22.4 Either Party may change its address for service by serving a notice in accordance with this Clause 22.
- 22.5 For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

23. DISPUTES AND LAW

23.1 Governing Law and Jurisdiction

- 23.1.1 The Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

24. DISPUTE RESOLUTION

- 24.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Letter of Appointment.
- 24.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 24.3 If the dispute cannot be resolved by the Parties pursuant to Clause 24.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 24.5 unless:
- 24.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
 - 24.3.2 the Supplier does not agree to mediation.
- 24.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Supplier's Staff shall comply fully with the requirements of the Contract at all times.
- 24.5 The procedure for mediation is as follows:
- 24.5.1 a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
 - 24.5.2 the Parties shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
 - 24.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - 24.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - 24.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
 - 24.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

25. DISASTER RECOVERY AND BUSINESS CONTINUITY

- 25.1 The Parties shall comply with the provisions of Schedule 3 (Disaster Recovery and Business Continuity).

26. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

- 26.1 Without prejudice to any other right or remedy which the Customer may have, if any Contract Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Contract Services have been delivered) do any of the following:

- 26.1.1 at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Contract Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Contract Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
 - 26.1.2 if Annex 1 of the Letter of Appointment provides for the payment of delay payments, then the Supplier shall pay such amounts (as stipulated in the Letter of Appointment) on demand. The delay payments will accrue on a daily basis from the relevant milestone date and will continue to accrue until the date when the milestone is achieved;
 - 26.1.3 carry out, at the Supplier's expense, any work necessary to make the Contract Services comply with the Contract;
 - 26.1.4 without terminating the Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with the Contract;
 - 26.1.5 without terminating the whole of the Contract, terminate the Contract in respect of part of the Contract Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or
 - 26.1.6 charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.
- 26.2 In the event that the Supplier:
- 26.2.1 fails to comply with Clause 26.1 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
 - 26.2.2 persistently fails to comply with Clause 26.1,
- the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

27. RECORDS AND AUDIT ACCESS

- 27.1 The Supplier shall keep and maintain for seven (7) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, and the amounts paid by the Customer.
- 27.2 The Supplier shall keep the records and accounts referred to in Clause 27.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 27.3 The Supplier shall afford the Customer and the auditors access to the records and accounts referred to in Clause 27.1 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the auditors from time to time, in order that the Customer and/or the auditors may carry out an inspection including for the following purposes:

- 27.3.1 to verify the accuracy of the Contract Charges (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all suppliers (including Sub-Contractors) of the Contract Services;
- 27.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
- 27.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
- 27.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in Schedule 7 of the Framework Agreement;
- 27.3.5 to review the Supplier's compliance with its security obligations set out, if appropriate, in clause 32 of Schedule 4 (Additional Optional Clauses).
- 27.3.6 to review any books of account kept by the Supplier in connection with the provision of the Contract Service;
- 27.3.7 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 Customer has used its resources;
- 27.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
- 27.3.9 to ensure that the Supplier is complying with its obligations under this Contract.
- 27.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the auditor access to such records and accounts as may be required by the Customer from time to time.
- 27.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the term of the Contract and for the period specified in the Letter of Appointment after the date of termination or expiry of the term of the Contract to the Customer and/or the auditors.
- 27.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Contract Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the auditor is outside of the control of the Customer.
- 27.7 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the auditors with all reasonable co-operation and assistance in
 - 27.7.1 all reasonable information requested by the Customer within the scope of the audit;
 - 27.7.2 reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Contract Services; and
 - 27.7.3 access to the Supplier's Staff.
- 27.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 27, unless the audit reveals a Material Breach by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

28. VARIATION

- 28.1 Subject to the provisions of this Clause 28, the Customer may request a variation to the Contract Services ordered provided that such variation does not amount to a material change to the Letter of Appointment. Such a change is hereinafter called a "Variation".
- 28.2 The Customer may request a Variation by completing and sending the Variation form set out in Schedule 2 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Letter of Appointment.
- 28.3 In the event that the Supplier is unable to provide the Variation to the Contract Services or where the Parties are unable to agree a change to the Contract Charges, the Customer may:
- 28.3.1 agree to continue to perform their obligations under the Contract without the Variation; or
- 28.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the order in accordance with the Letter of Appointment or where the Supplier can show evidence of substantial work being carried out to fulfil the Letter of Appointment, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under Clause 24 (Dispute Resolution).
- 28.4 If the Parties agree the Variation and any variation in the Contract Charges, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

29. MISTAKES IN INFORMATION

- 29.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Contract Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

SCHEDULE 1 TO CALL-OFF TERMS

SERVICE LEVELS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Compensation for Unacceptable KPI Failure	has the meaning given in Clause 2.8.1.1 of the Call-Off Terms;
Critical Performance Failure	<p>(a) The Supplier accruing in aggregate 750 (seven hundred and fifty) Service Failure Points or more in terms of the number of points allocated) in any period of three months; or</p> <p>(b) The Supplier accruing Service Credits or Compensation) for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;</p>
Critical Performance Failure Total	750 (seven hundred and fifty) Service Failure Points;
Exclusion	has the meaning given in Paragraph 7.2;
Gainshare	has the meaning given in Paragraph 1 of Schedule 13 (Gain Share);
Intervention Trigger	75% of the Critical Performance Failure Total in any month i.e. 562 Service Failure Points in any three month period;
Key Performance Indicator	the Key Performance Indicators identified in Appendix 1 of this Schedule 1;
KPI Failure	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
KPI Service Threshold	shall be as set out against the relevant Key Performance Indicator in Appendix 1 of this Schedule 1;
Material KPI Failure	a failure to meet a Key Performance Indicator for three consecutive months
Material SPI Failure	a failure by the Supplier to meet the SPI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period;
Minor KPI Failure	shall be as set out against the relevant Key Performance Indicator in Appendix 1 of this Schedule 1;

Minor SPI Failure	shall be as set out against the relevant Subsidiary Performance Indicator in Appendix 1 of this Schedule 1;
Performance Indicator	a performance indicator as set out in Appendix 1 and labelled as either Key or Subsidiary
Performance Monitoring Report	has the meaning given in Paragraph 1;
Performance Review Meeting	the regular meetings between the Supplier and the Customer to manage and review the Supplier's performance under this Contract, as further described in Paragraph 9.4;
Repeat KPI Failure	has the meaning given in Paragraph 5.1.1;
Repeat SPI Failure	has the meaning given in Paragraph 5.1.2
Savings Payment	Has the meaning given to it in Schedule 13 (Gain Share);
Serious KPI Failure	shall be as set out against the relevant Key Performance Indicator in Appendix 1 of this Schedule 1;
Serious SPI Failure	shall be as set out against the relevant Subsidiary Performance Indicator in Appendix 1 of Schedule 1 (Performance Levels);
Service Period	the relevant period specified in Appendix 1 of this Schedule 1;
Service Credit Cap	80% of the Supplier's Profit Costs
Service Credits	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Appendix 2 (Contact Charges);
Service Failure Points	<p>in relation to a:</p> <ul style="list-style-type: none"> (a) KPI Failure; or (b) SPI Failure, <p>the points that are set out against the relevant Key Performance Indicator and/or Subsidiary Performance Indicator (as the case may be) in the table in Appendix 1 of this Schedule 1;</p>
Severe KPI Failure	shall be as set out against the relevant Key Performance Indicator in Appendix 1 of this Schedule 1;
Severe SPI Failure	shall be as set out against the relevant Subsidiary Performance Indicator in Appendix 1 of

this Schedule 1;

SFP Annual Threshold	14040 Service Failure Points in the relevant Contract Year being the maximum total Service Failure Points available per annum excluding repeat failure ratchet;
SPI Service Threshold	shall be as set out against the relevant Subsidiary Performance Indicator in Appendix 1 of this Schedule 1;
SSA Deficit	has the meaning given to it in Paragraph 5.3.2;
Subsidiary Performance Indicator	the subsidiary performance indicators identified as such in Appendix 1 of this Schedule 1;
Target Performance Level	the relevant performance standard set out in Appendix 1 of this Schedule 1 against a Performance Indicator.
Unacceptable KPI Failure	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period

2. SCOPE

This Schedule sets out the Service Levels which the Supplier is required to achieve when delivering the Contract Services.

3. SERVICE LEVELS

3.1 The objectives of the Service Levels are to ensure that the Contract Services are of a consistently high quality and meet the requirements of the Customer.

3.2 The Service Levels are as follows:

Performance Criteria	Service Level	Performance Guidance
1. Requirement	1.1 Supplier did have the necessary understanding and expertise to meet Customer expectations.	The Supplier has a good knowledge of the subject and the environment in which the Customer operates - Customer expectations of Supplier expertise are met
	1.2 Supplier is open and proactive in optimising costs	Efforts made to minimise expenses - prices are in line with market expectations - Supplier is open in explaining price breakdown and working with the Customer to identify opportunities to reduce cost – accurate and timely billing of Customer and invoices provided in line with Customer requirements

	1.3 Supplier is proactive in identifying and managing risks	Supplier is proactive in identifying and allocating risk ownership - Supplier supports Customer in assigning and managing risks - Supplier is proactive in assessing impact of risks in the course of performing the Contract and raising issues as appropriate
2. Quality of advice	2.1 Supplier provides good advice provided within timescale and covers all issues requested appropriately.	Advice is technically sound and clearly expressed – Supplier adheres to timelines and shows right focus– Supplier strikes appropriate balance between covering issues thoroughly and providing unnecessary detail
3. Engagement & Relationship	3.1 Supplier engagement with the Customer is appropriate and focused on Contract Services delivery	Supplier uses the right channels within the department - Customer is able to distinguish between business development activity/roles and delivery activity/role - Supplier does not exploit its position/ relationship with the Customer
	3.2 Supplier establishes effective working relationships with the Customer	Supplier integrates well with Customer staff and other advisers- Supplier is flexible in its approach to the Customer - demonstrates a knowledge of Customer culture - manages engagement issues well and does not let them impact on delivery - Supplier builds good relationships with internal staff with the Customer - Supplier does not take advantage of its position / relationship with the Customer
4. Project Management	4.1 Supplier resources are deployed in the right way to deliver value.	Staff are consistent throughout the duration of the Services - the Supplier explains how project team has been put together to deliver the Services - resource requirement remains in line with that included in the proposal - focus on Contract Services delivery is maintained -
	4.2 Roles and responsibilities are clear	Supplier provides clarity as to the roles and responsibilities of each member of the legal team engaged
	4.3 Supplier governance and project management is effective in ensuring the assignment is successful	Issues were raised as soon as possible and solutions offered - delivery plan was developed and agreed with the Customer at the outset - progress against milestones was reported regularly and in line with Customer requirements - Customer satisfaction with delivery was monitored by the Supplier
	4.4 Original scoping was robust	The scope and resource requirement remained in line with initial proposal - initial proposal was accurate and did not need to be amended
5. Value for Money	5.1 Delivery on time	As per Supplier proposal
	5.2 Delivery on budget	As per Supplier proposal
	5.3 Value for Money	Extent to which the benefits - as outlined in the assignment proposal – were delivered

6. Skills Transfer	6.1 Skills transfer	Supplier identified opportunities for skills and knowledge transfer - Supplier delivered transfer within original time and budget
7. Exit Strategy	7.1 Project closure 7.2 Completion reports	Supplier reflected any exit strategy requirements in their proposal - the project was closed off with no outstanding dependencies On completion of each project, or at the end of key stages within a project if the customer so requests, the Contract will provide a summary of the work carried out to include his assessment of successes/failures and potential improvements that could be made

The specific requirements of the Customer regarding performance and service levels are set out below:

3 PERFORMANCE INDICATORS

- 3.1 Appendix 1 sets out the Key Performance Indicators (**KPIs**) and Subsidiary Performance Indicators (**SPIs**) which the Parties have agreed shall be used to measure the performance of the Contract Services by the Supplier.
- 3.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Customer a report detailing the level of service actually achieved in accordance with this Schedule 1.
- 3.3 Service Failure Points, shall accrue for any:
 - 3.3.1 KPI Failure; and/or
 - 3.3.2 SPI Failure,
 and shall be calculated in accordance with Paragraphs 4 - 7.
- 3.4 Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraph 8 and Appendix 2 (Contract Charges).

4 SERVICE FAILURE POINTS

- 4.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a:
 - 4.1.1 Key Performance Indicator; and/or
 - 4.1.2 Subsidiary Performance Indicator,
 no Service Failure Points shall accrue to the Supplier in respect of the relevant Key Performance Indicator or Subsidiary Performance Indicator (as the case may be).
- 4.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a:
 - 4.2.1 Key Performance Indicator; and/or
 - 4.2.2 Subsidiary Performance Indicator,

Service Failure Points shall accrue to the Supplier in respect of the relevant Key Performance Indicator and/or Subsidiary Performance Indicator (as the case may be) as set out in Paragraphs 4.3 and 4.4.

- 4.3 The number of Service Failure Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Appendix 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 5.2 shall apply.
- 4.4 The number of Service Failure Points that shall accrue to the Supplier in respect of a SPI Failure shall be the applicable number as set out in Appendix 1 depending on whether the SPI Failure is a Minor SPI Failure, a Serious SPI Failure or a Severe SPI Failure, unless the SPI Failure is a Repeat SPI Failure when the provisions of Paragraph 5.5 shall apply.

5 REPEAT KPI FAILURES AND REPEAT SPI FAILURES

- 5.1 If a:

5.1.1 KPI Failure occurs in respect of the same Key Performance Indicator in any three or more consecutive Months, the second and any subsequent such KPI Failure shall be a Repeat KPI Failure. **Repeat KPI Failures**

5.1.2 SPI Failure occurs in respect of the same Subsidiary Performance Indicator in any three or more consecutive Months, the second and any subsequent such SPI Failure shall be a Repeat SPI Failure. **Repeat SPI Failures**

- 5.2 The number of Service Failure Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

SFP = KPIP x M where:

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

KPIP = the applicable number of Service Failure Points for that KPI Failure as set out in Appendix 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.

M = the number of consecutive Months the relevant KPI Failure has subsisted.

- 5.3 Without prejudice to the Customer's rights and remedies under this Agreement, where the relevant KPI Failure has subsisted for three (3) consecutive Months, such failure shall be deemed to be a Material KPI Failure.
- 5.4 **Worked example:** the number of Service Failure Points for KPI 1 is set at five (5) for a Minor KPI Failure. In the event that the Target Performance Level for KPI 1 is not achieved in January and such failure amounts to a Minor KPI Failure, five (5) Service Failure Points would accrue to the Supplier. If in February, the Target Performance Level for KPI 1 is not achieved and such failure amounts to a Minor KPI Failure the Service Failure Points accruing in February would be multiplied by a factor of 2 (resulting in ten (10) Service Failure Points accruing for KPI 1 in the Month of February). If in March, the Target Performance Level for KPI 1 is not achieved and the failure amounts to a Minor KPI Failure the Service Failure Points accruing in March would be multiplied by a factor of 3 (resulting in fifteen (15) Service Failure Points accruing for KPI 1 in the Month of March) and such consecutive failures would be deemed to be a Material KPI Failure.

Repeat SPI Failures

- 5.5 The number of Service Failure Points that shall accrue to the Supplier in respect of a SPI Failure that is a Repeat SPI Failure shall be calculated as follows:

SFP = SuPIP x M where:

SFP = the number of Service Failure Points that shall accrue for the Repeat SPI Failure; and

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

M = the number of consecutive Months the relevant SPI Failure has subsisted

- 5.6 Without prejudice to the Customer's rights and remedies under this Contract, where the relevant SPI Failure has subsisted for three (3) consecutive Months, such failure shall be deemed to be a Material SPI Failure.

- 5.7 **Worked example:** the number of Service Failure Points for SPI 1 is set at ten (10) for a Minor SPI Failure. In the event that the Target Performance Level for SPI 1 is not achieved in January and such failure amounts to a Minor SPI Failure, ten (10) Service Failure Points would accrue to the Supplier. If in February, the Target Performance Level for SPI 1 is not achieved and such failure amounts to a Minor SPI Failure the Service Failure Points accruing in February would be multiplied by a factor of 2 (resulting in twenty (20) Service Failure Points accruing for SPI 1 in the Month of February). If in March, the Target Performance Level for SPI 1 is not achieved and the failure amounts to a Minor SPI Failure the Service Failure Points accruing in March would be multiplied by a factor of 3 (resulting in thirty (30) Service Failure Points accruing for SPI 1 in the Month of March) and such consecutive failures would be deemed to be a Material SPI Failure.

6 SERVICE FAILURE POINTS AND SAVINGS

- 6.1 Without prejudice to any other right or remedy available to the Customer, the Customer may reduce the value of the Supplier Savings Account by an amount calculated as follows:

$$RSSA = \left(\frac{SFPCY}{SFPAT} \times 100 = \%A \right) SSABA - \%A$$

RSSA = the revised Supplier Savings Account for the relevant Contract Year

SFPCY = total Service Failure Points incurred by the Supplier in the relevant Contract Year

SFPAT = the SFP Annual Threshold

%A = the percentage adjustment to be applied SSABA

SSABA = the value of the Supplier Savings Account before adjustment by %A.

- 6.2 **Worked Example:** if in a given Contract Year the Supplier has incurred 20 Service Failure Points and this represents 20% of the SFP Annual Threshold the aggregate value of the Supplier Savings Account shall be reduced by 20% and any Savings Payment shall be calculated with reference to RSSA.

- 6.3 The Parties acknowledge and agree that:
- 6.3.1 where the difference between SSABA and RSSA in a Contract Year is a positive number, this shall be for the sole account of the Customer;
- 6.3.2 where the RSSA in the relevant Contract Year is not a positive number (an **SSA Deficit**), any such SSA Deficit may be carried forward by the Customer in to future Contract Years until such time as the SSA Deficit is zero (0); and

7 PERMITTED EXCLUSIONS

- 7.1 Subject always to Paragraph 7.3, where the Supplier demonstrates to the reasonable satisfaction of the Customer that an instance of failure in relation to a Performance Indicator in the relevant Month arose as the direct result of an Exclusion such instance of failure shall be discounted for the purposes of evaluating the Supplier's performance against the required standard set out in Appendix 1 to this Schedule in relation to the relevant Performance Indicator.
- 7.2 In this Paragraph 7, Exclusion shall mean any one or more of the following events:
- 7.2.1 periods during which the Business Continuity and Disaster Recovery Plan has been invoked (all affected Performance Indicators); and/or
- 7.2.2 periods during which a Force Majeure Event is subsisting (all affected Performance Indicators).
- 7.3 During any period excluded from measurement of the Supplier's performance of the required standard pursuant to this Paragraph 7, the Supplier shall use reasonable endeavours to adhere to the required standard and if it fails to do so such periods shall be taken into account when evaluating the Supplier's performance against the required standard set out in the relevant Performance Indicator as if the relevant Exclusion did not apply.

8 SERVICE CREDITS AND SERVICE FAILURE POINTS

- 8.1 Paragraph 7 of Annex 1 (Contract Charges) sets out the mechanism by which Service Credits shall be calculated.
- 8.2 Service Failure Points shall be calculated by reference to Appendix 1 to this Schedule 1.
- 8.3 In any Contract Year, an amount up to the Service Credit Cap is available as Service Credits for breach of Key Performance Indicators. The annual Service Credit Cap is distributed equally across all Key Performance Indicators for that Contract Year and the monthly value is obtained by dividing this by 12. If in any Service Period there is a breach of a Key Performance Indicator the Service Credit shall be calculated according to whether the breach is minor, serious or severe as follows:

Severity	Percentage of monthly value per KPI breach
Minor	50%
Serious	75%
Severe	100%

- 8.4 The Customer shall use the Performance Monitoring Reports provided pursuant to this Schedule among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each measurement period.

9 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 9.1 Within two (2) Business Days of each Service Period, the Supplier shall provide a report to the Customer Representative which summarises the performance by the Supplier against each of the Performance Indicators (the **Performance Monitoring Report**).
- 9.2 The Performance Monitoring Report shall in such format as agreed between the Parties from time to time and contain, as a minimum, the following information in respect of the Service Period just ended:
 - 9.2.1 for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over each Service Period, and where the Performance Monitoring Report relates to a monthly Service Period, that achieved over each of Service Periods in the previous 3 Months;
 - 9.2.2 a summary of all Performance Failures that occurred during the Service Period;
 - 9.2.3 the severity level of each KPI Failure and SPI Failure which occurred during the Service Period;
 - 9.2.4 which Performance Failures remain outstanding and progress in resolving them;
 - 9.2.5 for any Material KPI Failures or Material SPI Failures occurring during the Service Period, the cause of the relevant Material KPI Failure or Material SPI Failure and the action being taken to reduce the likelihood of recurrence;
 - 9.2.6 the status of any outstanding Rectification Plan processes, including:
 - (a) whether or not a Rectification Plan has been agreed; and
 - (b) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
 - 9.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 9.2.8 the number of Service Failure Points awarded in respect of each KPI Failure or SPI Failure;
 - 9.2.9 the Service Credits to be applied, indicating the KPI Failure(s) and SPI Failures to which the Service Credits relate;
 - 9.2.10 relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;
 - 9.2.11 such other details as the Customer may reasonably require from time to time;
 - 9.2.12 where the Performance Monitoring Report relates to a monthly Service Period, a rolling total of the number of Performance Failures that have occurred over the past six Months;
 - 9.2.13 where the Performance Monitoring Report relates to a monthly Service Period, the amount of Service Credits that have been incurred by the Supplier over the past six Months;
 - 9.2.14 the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Business Continuity and Disaster Recovery Detailed Solution;
 - 9.2.15 information in respect of the next quarter; and
- 9.3 The Performance Monitoring Report shall be reviewed and the contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 9.44.
- 9.4 The Parties shall attend meetings (the **Performance Review Meetings**) on a weekly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 9.4.1 take place within two (5) Working Days of the Performance Monitoring Report being issued by the Supplier pursuant to Paragraph 9.1;

- 9.4.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require (unless otherwise agreed in advance); and
- 9.4.3 be attended by the Supplier Representative and the Customer Representative.
- 9.5 The Customer shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or SPI Failure.

10 PERFORMANCE RECORDS

- 10.1 The Supplier shall keep appropriate documents and records including (staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Contract Services being delivered and provide prompt access to such records to the Customer upon the Customer's request. The records and documents of the Supplier shall be available for inspection by the Customer and/or its nominee at any time and the Customer and/or its nominee may make copies of any such records and documents.
- 10.2 In addition to the requirement in Paragraph 10.1 to maintain appropriate documents and records, the Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance of the Supplier both before and after the Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 10.3 The Supplier shall ensure that the Performance Monitoring 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 Customer are available to the Customer on-line and are capable of being printed.

11 PERFORMANCE VERIFICATION

- 11.1 The Customer or their nominated representatives of the Integrator reserves the right to verify the availability of the Contract Services (including, without limitation, the Supplier Systems) and the Supplier's performance under this Contract against the Service Levels including by sending test transactions through the Supplier's Systems or otherwise.

12 BEDDING-IN PERIOD

- 12.1 Without prejudice to the remedies available to the Customer under this Contract where a KPI Failure occurs during the period of three (3) Contract Months commencing on the Operational Services Commencement Date the Customer and the Supplier acknowledge and agree that:
 - 12.1.1 Notwithstanding the other provisions of this Schedule, the Supplier shall comply with its obligation under this Contract;
 - 12.1.2 Service Credits shall not be deducted from the Service Charges pursuant to Appendix 1 (Contract Charges) and;
 - 12.1.3 Notwithstanding Paragraph 12.1.2:
 - (a) the Customer shall be entitled to apply such Service Credits including inter alia to the calculation of the Service Credit Cap and/or SFP Annual Threshold (as the case may be); and
 - (b) Service Failure Points will be accrued from the Operational Services Commencement Date.

13 CHANGES TO PERFORMANCE INDICATORS AND SERVICE CREDITS

- 13.1 Not more than once in each Contract Year the Customer may, on giving the Supplier at least 3 months' notice:
- 13.1.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
 - 13.1.2 convert one or more:
 - (a) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - (b) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).
- 13.2 The Supplier shall not be entitled to object to any changes made by the Customer under Paragraph 13.1, or increase the Contract Charges as a result of such changes provided that:
- 13.2.1 the total number of Key Performance Indicators does not exceed eleven (11);
 - 13.2.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards;
 - 13.2.3 there is no change to the Service Credit Cap; and
 - 13.2.4 there is no change to the aggregate total of Service Failure Points in the table in Appendix 1 of this Schedule 1.

APPENDIX 1

DOCUMENT REDACTED

SCHEDULE 2: VARIATION FORM

(Clause 28)

Letter of Appointment being varied dated :

Variation Form No:.....

BETWEEN:

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

and

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

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

[Guidance Note: Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Contract (as defined in the Letter of Appointment).
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

SCHEDULE 3: DISASTER RECOVERY AND BUSINESS CONTINUITY

(Clause 25)

1. PURPOSE OF THIS SCHEDULE

- 1.1. This Schedule sets out the Customer's requirements for ensuring continuity of the business processes and operations supported by the Contract Services in circumstances of Contract Service disruption or failure and for restoring the Contract Services through business continuity and as necessary Disaster recovery procedures. It also includes the requirement on the Supplier to develop, review, test, change and maintain a BCDR Plan in respect of the Contract Services.
- 1.2. The BCDR Plan shall be divided into three parts:
 - 1.2.1. Part A which shall set out general principles applicable to the BCDR Plan ("**General Principles**").
 - 1.2.2. Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
 - 1.2.3. Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**"); and
- 1.3. The BCDR Plan shall detail the processes and arrangements which the Supplier shall follow to ensure continuity of the business processes and operations supported by the Contract Services following any failure or disruption of any element of the Contract Services and the recovery of the Contract Services in the event of a Disaster.

2. DEVELOPMENT OF BCDR PLAN

- 2.1. The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3 and 5 of this Schedule 3 (Disaster Recovery and Business Continuity).
- 2.2. The Supplier shall ensure that its Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1. The BCDR Plan shall:
 - 3.1.1. set out how its business continuity and Disaster recovery elements link to each other;
 - 3.1.2. provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Contract Services;
 - 3.1.3. contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Framework supplier with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4. detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Framework suppliers as notified to the Supplier by the Customer from time to time;
 - 3.1.5. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via 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 Customer;
 - 3.1.6. contain a risk analysis, including:

- 3.1.6.1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
- 3.1.6.2. identification of any single points of failure within the Contract Services and processes for managing the risks arising there from;
- 3.1.6.3. identification of risks arising from the interaction of the Contract Services with the services provided by a Framework supplier; and
- 3.1.6.4. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7. provide for documentation of processes, including business processes, and procedures;
- 3.1.8. set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
- 3.1.9. identify the procedures for reverting to "normal service";
- 3.1.10. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no data loss and to preserve data integrity;
- 3.1.11. identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12. provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.
- 3.2. The BCDR Plan shall be designed so as to ensure that:
 - 3.2.1. The Contract Services are provided in accordance with the Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2. the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
 - 3.2.3. it aligns with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and
 - 3.2.4. there is a process for the management of Disaster recovery testing detailed in the BCDR Plan.
- 3.3. The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Contract Services or to the business processes facilitated by and the business operations supported by the Contract Services.
- 3.4. The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Contract Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4. PART B - BUSINESS CONTINUITY ELEMENT - 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 Contract Services remain supported and to ensure continuity of the business operations supported by the Contract Services including but not limited to and unless the Customer expressly states otherwise in writing:

- 4.1.1.the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Contract Services; and
- 4.1.2.the steps to be taken by the Supplier upon resumption of the Contract 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 address the various possible levels of failures of or disruptions to the Contract Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

5. PART C - DISASTER RECOVERY ELEMENT - 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 Customer supported by the Contract 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 only be invoked upon the occurrence of a Disaster.
- 5.3. The Disaster Recovery Plan shall include the following:
 - 5.3.1.the technical design and build specification of the disaster recovery system;
 - 5.3.2.details of the procedures and processes to be put in place by the Supplier and any Sub-Contractor 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:
 - 5.3.2.1. data centre and disaster recovery site audits;
 - 5.3.2.2. backup methodology and details of the Supplier's approach to data back-up and data verification;
 - 5.3.2.3. identification of all potential disaster scenarios;
 - 5.3.2.4. risk analysis;
 - 5.3.2.5. documentation of processes and procedures;
 - 5.3.2.6. hardware configuration details;
 - 5.3.2.7. network planning including details of all relevant data networks and communication links;
 - 5.3.2.8. invocation rules;
 - 5.3.2.9. services recovery procedures;
 - 5.3.2.10. steps to be taken upon Contract Services resumption to address any prevailing effect of the Contract Services failure or disruption;
 - 5.3.3.any applicable Service Levels with respect to the provision of disaster recovery services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
 - 5.3.4.details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is

invoked;

5.3.5.access controls (to any disaster recovery sites used by the Supplier or any Sub-Contractor in relation to its obligations pursuant to this Schedule 3); and

5.3.6.testing and management arrangements.

6. PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN

6.1. The Supplier shall provide a draft of the BCDR Plan within twenty (20) Working Days following the Contract Commencement Date.

6.2. The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):

6.2.1.on a regular basis and as a minimum once every six (6) Months;

6.2.2.within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and

6.2.3.where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.2.1 and 6.2.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both Parties for any such additional reviews will be met by the Customer.

6.3. Each review pursuant to paragraph 6.1 of the BCDR Plan 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 Contract Services or any underlying business processes and operations facilitated by or supported by the Contract 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 the 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 Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**Review Report**") setting out:

6.3.1.the findings of the review;

6.3.2.any changes in the risk profile associated with the Contract Services; and

6.3.3.the Supplier's proposals ("**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.

6.4. The Supplier shall as soon as is reasonably practicable after receiving the Customer's written 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 project's risk profile.

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 year during the Contract period). Subject to paragraph 7.2, the Customer may require the

Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Contract 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 Customer requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3. Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 7.4. The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Where required by the Customer, each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5. The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6. The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
 - 7.6.1.the outcome of the test;
 - 7.6.2.any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test;
and
 - 7.6.3.the Supplier's proposals for remedying any such failures.
- 7.7. Following each test, the Supplier shall take all measures requested by the Customer, (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 Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8. 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 Schedule 3 or otherwise.
- 7.9. The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of the Contract Services.

8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

- 8.1. In the event of a complete loss of the Contract Service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall only invoke or test the BCDR Plan with the prior written consent of the Customer.
- 8.2. Following a request from the Customer, the Supplier shall provide a written incident report and the BCDR Plan review following a plan invocation, but in any event within twenty (20) Working Days of full business recovery.

SCHEDULE 4: ADDITIONAL/ OPTIONAL CLAUSES

Time of the Essence
Supplier's Staff
Protection of Information

30. TIME OF THE ESSENCE

- 30.1 Because of the nature of the Contract Services to be provided, time will be of the essence of the Contract when a delivery date has been agreed and any late delivery or performance by the Supplier, will be treated as a fundamental breach of the Contract not capable of remedy when interpreting Clause 8 of the Contract, except where the delay is caused:
- 30.1.1 through the fault of the Customer or another supplier to the Customer; or
 - 30.1.2 through reason of Force Majeure (as defined and applied in the Framework Agreement).
- 30.2 In the event of late delivery of the Contract Services caused other than by the exceptions given above:
- 30.2.1 the Customer may withhold any or all of the outstanding value of the Contract;
 - 30.2.2 at the request of the Customer, the Supplier will repay any or all amounts already paid to him in respect of the Contract; and
 - 30.2.3 the Customer shall have the right to decide what amounts will be withheld or repaid.
- 30.3 In exercising its rights or remedies under this Clause, the Customer will act in a reasonable and proportionate manner paying full and proper regard to the real loss in value of the Contract Service that the late delivery has caused.
- 30.4 In the event that late delivery results in the Contract Services having no value to the Customer and no payment is made to the Supplier, then the Supplier shall retain all rights in any materials he has produced and the Customer shall have no rights to such materials.

31. SUPPLIER'S STAFF

- 31.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's premises:
- 31.1.1 any member of the Supplier's Staff; or
 - 31.1.2 any person employed or engaged by any member of the Supplier's Staff,
 - 31.1.3 whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 31.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 31.3 Supplier's Staff engaged within the boundaries of the Customer's premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's premises.

- 31.4 If the Supplier fails to comply with Clause 31.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 31.5 The decision of the Customer as to whether any person is to be refused access to the Customer premises and as to whether the Supplier has failed to comply with Clause 31.2 shall be final and conclusive.

Relevant Convictions

"Relevant Conviction" means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.) which are relevant to the provision of the Contract Services by the Supplier;

- 31.6 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure & Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without Approval.
- 31.7 For each member of Supplier's Staff who, in providing the Contract Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
- 31.7.1 carry out a check with the records held by the Department for Education (DfE);
 - 31.7.2 conduct thorough questioning regarding any Relevant Convictions; and
 - 31.7.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure & Barring Service (DBS),
 - 31.7.4 and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Contract Services any person who has a Relevant Conviction or an inappropriate record.

32. PROTECTION OF INFORMATION

“Security Management Plan” means the security management plan set out in Schedule 5;

“Security Policy” means any security policy included in the Letter of Appointment or otherwise notified to the Supplier by the Customer in writing;

32.1 Security Requirements

- 32.1.1 The Supplier shall comply, and shall procure the compliance of the Supplier's Staff, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Management Plan fully complies with the Security Policy.
- 32.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 32.1.3 the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Contract Services it may notify the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.
- 32.1.4 Until and/or unless a change to the Contract Charges is agreed by the Customer pursuant to Clause 32.1.3 the Supplier shall continue to perform the Contract Services in accordance with its existing obligations.

32.2 Malicious Software

- 32.2.1 The Supplier shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of malicious software in the ICT environment (or as otherwise agreed between the Parties).
- 32.2.2 Notwithstanding Clause 32.2.1, if malicious software is found, the Parties shall co-operate to reduce the effect of the malicious software and, particularly if malicious software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Contract Services to their desired operating efficiency.
- 32.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 32.2.1 shall be borne by the Parties as follows:
- 32.2.4 by the Supplier, where the malicious software originates from the Supplier's software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such malicious software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- 32.2.5 by the Customer if the malicious software originates from the Customer's software or the Customer Data (whilst the Customer Data was under the control of the Customer).

32.3 Security of Premises

- 32.3.1 The Customer shall be responsible for maintaining the security of the Customer's premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on the Customer's premises and shall ensure that all Supplier's Staff comply with such

requirements.

- 32.3.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

32.4 Customer Data

- 32.4.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 32.4.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly approved by the Customer.
- 32.4.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.
- 32.4.4 To the extent that Customer Data is held and/or Processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 32.4.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Customer's security policy as set out in the Annex or as notified to the Supplier in writing by the Customer.
- 32.4.6 NOT USED
- 32.4.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Material Breach so as to be unusable, the Customer may:
- 32.4.8 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
- 32.4.9 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 32.4.10 If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

32.5 Process of Personal Data outside of the EEA

- 32.5.1 The Supplier shall not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Contract Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
- 32.5.2 the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation procedure and paragraph 32.5.3.1 to 32.5.3.6.2 below;

- 32.5.3 the Supplier shall set out in its request for a Variation details of the following:
- 32.5.3.1 the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - 32.5.3.2 the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - 32.5.3.3 any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - 32.5.3.4 how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
 - 32.5.3.5 in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant approval of such Process and/or transfer any Personal Data outside the European Economic Area; and
 - 32.5.3.6 the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - 32.5.3.6.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the Parties; and
 - 32.5.3.6.2 procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).
- 32.5.4 The Supplier shall, at all times during and after the Contract Period, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 32.5 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

SCHEDULE 5: SECURITY MANAGEMENT PLAN

In this Schedule the following provisions shall have the meanings given to them below:

"Breach of Security"	<p>in accordance with the security requirements in the Letter of Appointment and the Security Policy, the occurrence of:</p> <ul style="list-style-type: none">(a) any unauthorised access to or use of the Contract Services, the sites where the Contract Services are provided, the Supplier's system and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Contract; and/or(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Contract;
"ISMS"	<p>The Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the Parties and will directly reflect the scope of the Contract Services;</p>
"Protectively Marked"	<p>shall have the meaning as set out in the Security Policy Framework;</p>
"Security Management Plan"	<p>means the security management plan set out in this Schedule;</p>
"Security Policy"	<p>means any security policy included in the Annex or otherwise notified to the Supplier by the Customer in writing;</p>
"Security Policy Framework"	<p>means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);</p>
"Security Tests"	<p>shall have the meaning set out in paragraph 4 of this Schedule;</p>
"Statement of Applicability"	<p>shall have the meaning set out in ISO/IEC 27001 and as agreed by the Parties during the procurement phase.</p>

1 INTRODUCTION

1.1 This Schedule covers:

- 1.1.1 principles of protective security to be applied in delivering the Contract Services;
- 1.1.2 wider aspects of security relating to the Contract Services;
- 1.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.1.4 the creation and maintenance of the Security Management Plan;
- 1.1.5 audit and testing of ISMS compliance with the security requirements (as set out in the Annex);
- 1.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;
- 1.1.7 obligations in the event of actual, potential or attempted breaches of security.

2 PRINCIPLES OF SECURITY

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 2.2 The Supplier shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
 - 2.2.1 is in accordance with Good Industry Practice, Law and this Contract;
 - 2.2.2 complies with the Security Policy;
 - 2.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
 - 2.2.4 meets any specific security threats to the ISMS;
 - 2.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 3 of this Schedule;
 - 2.2.6 complies with the security requirements as set out in the Letter of Appointment; and
 - 2.2.7 complies with the Customer's ICT standards.
- 2.3 The references to standards, guidance and policies set out in paragraph 2.2 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, from time to time.
- 2.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

3 ISMS AND SECURITY MANAGEMENT PLAN

3.1 Introduction

- 3.1.1 The Supplier shall develop, implement, operate, maintain and continuously improve and maintain (and ensure that all Supplier's Staff and Sub-Contractors implement and comply with) an ISMS which will be approved, by the Customer, tested periodically updated and audited in accordance with ISO/IEC 27001.
- 3.1.2 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the term of this Contract.
- 3.1.3 The Supplier shall comply with its obligations set out in the Security Management Plan and any other provision of the Framework Agreement relevant to security.
- 3.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Contract Services and all processes associated with the delivery of the Contract Services, including the sites where the Contract Services are provided, the Supplier's system and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract.
- 3.1.5 The Supplier is responsible for monitoring and ensuring that it is aware of changes to the Security Policy. The Supplier shall keep the Security Management Plan up-to-date with the Security Policy as amended from time to time.

3.2 Development of the Security Management Plan

- 3.2.1 Within twenty (20) Working Days after the date of this Contract or such other period as otherwise agreed by the Parties in writing) and in accordance with paragraph 3.4 (Amendment and Revision), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 3.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 (Amendment and Revision), is approved it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not approved the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with Clause 24 (Dispute Resolution). No approval to be given by the Customer pursuant to this paragraph 3.2.2 may be unreasonably withheld or delayed. However where the Customer does not approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4 shall be deemed to be reasonable.

3.3 Content of the Security Management Plan

- 3.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Contract Services and all processes associated with the delivery of the Contract Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Contract Services comply with the provisions of this Contract (including this Schedule, the principles set out in paragraph 2.2 and any other elements of this Contract relevant to security or any data protection guidance produced by the Customer);
- 3.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place

at the Contract Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Annex for the Supplier to meet the full obligations of the security requirements set out in this Contract and in the Letter of Appointment.

- 3.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules of this Contract which cover specific areas included within that standard.
- 3.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the Supplier's Staff and the Customer engaged in the Contract Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule.

3.4 Amendment and Revision of the ISMS and Security Management Plan

- 3.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
 - 3.4.2 emerging changes in Good Industry Practice;
 - 3.4.3 any change or proposed change to the Supplier System, the Contract Services and/or associated processes;
 - 3.4.4 any new perceived or changed security threats;
 - 3.4.5 any reasonable request by the Customer.
- 3.4.6 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review should include, without limitation:
 - 3.4.6.1 suggested improvements to the effectiveness of the ISMS;
 - 3.4.6.2 updates to the risk assessments;
 - 3.4.6.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
 - 3.4.6.4 suggested improvements in measuring the effectiveness of controls.
- 3.4.7 On receipt of the results of such reviews, the Customer shall approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.2.2.
- 3.4.8 Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a Customer request or change to the requirement set out in the Letter of Appointment or otherwise) shall be subject to the Variation procedure set out in the Contract and shall not be implemented until approved in writing by the Customer.

4 TESTING

- 4.1 The Supplier shall conduct tests of the ISMS ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.
- 4.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.

- 4.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving 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 Customer may notify the Supplier of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Contract Services. If such tests adversely affect the Supplier's ability to deliver the Contract Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.1 and 4.2 above reveals any actual or potential Breach of Security and/or security failure or weaknesses, the Supplier shall promptly notify the Customer in writing 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 Customer's approval in accordance with paragraph 3.2.2, the Supplier shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or security requirements (as set out in the Letter of Appointment), the change to the ISMS or Security Management Plan shall be at no cost to the Customer. For the purposes of this paragraph 4, weaknesses means a vulnerability in security and failure means a possible breach of the Security Management Plan or security requirements.

5 COMPLIANCE WITH ISO/IEC 27001

- 5.1 Where the Customer requests, the Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve (12) Months of the Contract Commencement Date or such reasonable time period as to be agreed with the Customer and shall maintain such certification for the duration of the Contract.
- 5.2 If certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement for certification in respect of the relevant parts.
- 5.3 The Customer shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 5.4 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer 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 become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or in part.
- 5.5 If, as a result of any such independent audit as described in paragraph 5.3 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 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 Customer in obtaining such audit.

6 BREACH OF SECURITY

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

- 6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Supplier shall:
- 6.3 immediately take all reasonable steps necessary to:
 - 6.3.1 remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
 - 6.3.2 prevent an equivalent breach in the future.
- 6.4 Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Contract, then the Supplier shall be entitled to refer the matter to the Variation procedure set out in the Contract; and
- 6.5 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

ANNEX 1 – CONTRACT SERVICES

1 Definitions

Unless otherwise provided or the context otherwise requires the following expressions set out in this Annex 1 and the Contract shall have the meanings set out below.

Contract Year	the period from the Contract Commencement Date to 17 September 2018 and thereafter each subsequent twelve (12) calendar months provided that the final Contract Year shall be such period as commences on and includes the anniversary of the Contract Commencement Date that falls in the year in which this Contract expires or is terminated (for whatever reason) and ends on and includes the date of expiry or earlier termination of this Contract being the day before the third anniversary of the Contract Commencement Date;
Extended Term Date	the First Term Extension Date and/or the Second Term Extension Date
Extension Period	the First Term Extension Period or Second Term Extension Period
First Term Extension Date	the date falling twelve months from the Initial Term Date
First Term Extension Period	the period from the expiry of the Initial Term to the First Term Extension Date
Initial Term Date	17 September 2020 and Initial Term shall be construed accordingly
Losses	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
PRIME Contractors	<p>means</p> <p>(a) Trillium (PRIME) Limited a company registered and incorporated in accordance with the laws of England and Wales registered under number 3258384 and having its registered office at 140 London Wall, London EC2Y 5DN; and</p> <p>(b) Trillium (PRIME) Property GP Limited a company registered and incorporated in accordance with the laws of England and Wales registered under number 3424587 and having its registered office at 140 London Wall, London EC2Y 5DN,</p> <p>and references to PRIME Contractor shall be construed accordingly;</p>

Second Term Extension Date	The date following twelve months from the First Term Extension Date
Second Term Extension Period	one year from and including expiry of the First Term Extension Period to the Second Term Extension Date
Service Element	any individual element of the Operational Services to be provided by the Supplier as more particularly described in this Annex 1 and Schedule 6;
Term	the duration of this Contract being the period commencing on the Contract Commencement Date and ending on the Initial Term Date or on the Term Date or earlier termination of this Agreement
Term Date	17 September 2020 or in the event of an extension pursuant to Paragraphs 2.3 to 2.10 the First Term Extension Date and/or the Second Term Extension Date (as the case may be)

2 Term

2.1 This Contract shall:

- (a) come into force on the Contract Commencement Date which shall be binding and enforceable as between the Parties from the date of signature;
- (b) be subject to the provisions of Clause 8 of the Call-Off Terms (Termination); and
- (c) be subject to expiry on the Initial Term Date in accordance with paragraph 2.2 or on the Extended Term Date in accordance with paragraph 2.3 and paragraph 2.5 (as the case may be).

2.2 Subject to the provisions of Clause 9 of the Call-Off Terms, this Contract shall terminate on the Initial Term Date unless the Customer has extended the Term in accordance with paragraphs 2.3 – 2.10 (inclusive).

2.3 The Customer may no later than four months before the Initial Term Date, request that the Supplier provides to the Customer for the Customer's consideration the:

- (a) Extension Period Price; and
- (b) Extension Period Supplier Profit Rate,

for the provision of the Contract Services during the First Term Extension Period and the Second Term Extension Period and the Supplier shall give full details of the Extension Period Price and the Extension Period Supplier Profit Rate no later than three months before the Initial Term Date.

2.4 In the event the Extension Period Price exceeds the Price for the third Contract Year the Supplier shall provide sufficient detail to the Customer to explain the nature of any variance from the Price and enable the Customer to fully evaluate the Extension Period Price.

2.5 In preparing the Extension Period Price and the Extension Period Supplier Profit Rate for the provision of Contract Services for the First Term Extension Period and the Second Term Extension Period the Supplier shall:

- (a) act reasonably and in good faith;
- (b) not adjust the economic balance of this Agreement; and

- (c) comply with the Customer's financial transparency rules provided to the Supplier.
- 2.6 The Supplier shall attend such meetings and shall provide such further or other information, data and documents as the Customer reasonably requires in order to assess the Supplier's Extension Period Price and/or the Extension Period Supplier Profit Rate.
- 2.7 The Customer shall give notice to the Supplier either accepting or rejecting the Supplier's proposed Extension Period Price and proposed Extension Period Supplier Profit Rate for each of the First Term Extension Period and Second Term Extension Period no later than two months before the Initial Term Date.
- 2.8 Where the Customer agrees the Extension Period Price and the Extension Period Supplier Profit Rate for the First Term Extension Period and Second Term Extension Period with the Supplier the Extension Period Price and the Extension Period Supplier Profit Rate shall be binding on the Supplier subject to the terms of this Contract. The Customer's agreement of the Extension Period Price and/or the Extension Period Supplier Profit Rate in no way obliges the Customer to extend the Term beyond the Initial Term Date or, where the Initial Term is extended, beyond the First Term Extension Date.
- 2.9 No later than one month before the Initial Term Date the Customer may at its sole discretion give notice to the Supplier extending the Term to the First Term Extension Date.
- 2.10 No later than four months before the First Term Extension Date the Customer may give notice to the Supplier that, subject to the Supplier's agreement, it intends to extend the Term to the Second Term Extension Date. The Supplier shall give notice either confirming its agreement to the extension of the Term to the Second Term Extension Date or confirming that it does not intend to provide the Contract Services beyond the First Term Extension Date, no later than three months before the Initial Term Date.
- 2.11 The term of this Contract may not be extended beyond the Second Term Extension Date.

3 Services

- 3.1 The Supplier shall provide the:
 - (a) Implementation Services during the Implementation Phase; and
 - (b) Operational Services from and including the Operational Services Commencement Date,
 so as to meet the requirements of this Contract.
- 3.2 The Supplier shall ensure that the Contract Services:
 - (a) comply in all respects with the terms of the Contract and this Annex 1; and
 - (b) comply with Schedule 6.

4 Implementation Services

- 4.1 The Implementation Services are Contract Services rendered during the Implementation Phase which runs from the Contract Commencement Date, and end no later than 31st March 2018. The Supplier will as a minimum be required during this period to;
 - (a) work with the outgoing PRIME Contractor to fully understand all outstanding issues that may include but not be limited to on-going disputes and rating appeals. It will be the Supplier's responsibility to take ownership of any ongoing rating appeals or disputes from 1st April 2018. This will not include service charge disputes that are outstanding at the 31st March 2018 which will continue to be the responsibility of the PRIME Contractor. However there will be a need for on-going liaison between the Supplier and the PRIME Contractor in relation to those properties where there was

an outstanding service charge / Landlord utility dispute at 31st March 2018. There may also be on going Lease renewal activity by the Customer and the Supplier will need to liaise with the Customer to ensure they fully understand the position at transition;

- (b) produce and execute a communications plan with all key stakeholders including the Customer's internal colleagues, all other Customer Supply Chain members, the Integrator, PRIME Contractor, Landlords and Local Authorities. The plan should include but not be limited to communicating with stakeholders that the Supplier is the main contact for all property related issues and will also include setting out transitional payment arrangements;
- (c) build a property data base model that is compatible with the Integrator's document and asset management system, which must include all property payment information, all property event dates such as lease breaks and rent reviews and highlight the Customer's lease obligations (which impacts / informs the Customer's Supply Chain) by the end of December 2017. This information will be sourced from the existing PRIME IT systems (current and historical), the Customer's master tracker and associated Excel files (which detail the Operational Portfolio commencing 1st April 2018), the Customer's appointed Property Agent and Conveyancers (renewed Leases) to facilitate a smooth transition into live operations. The vast majority of this information can be extracted from the existing PRIME Contractor's IT system but the Supplier will need to ensure its accuracy. In order to ensure compatibility with the Integrator's document and asset management system, the Supplier will be expected to closely liaise with the Integrator as both the Integrator and the Supplier develop their IT systems;
- (d) upload the property data base model information in to the Integrator's property document and asset management system by the end of January 2018;
- (e) test the property data base model by the end of January 2018 and provide the Customer with the reassurance required for this critical service;
- (f) produce the Customer's property related 2018/19 budget by the end of February 2018;
- (g) manage and pay rent, insurances and service charges as well as collect sub-let payments prior to 1st April 2018 as part of the transition arrangements. The Supplier will lead and manage an apportionment exercise for all invoices where the amounts due cover the period beyond 31st March 2018. For example this will see the Supplier pay quarterly rent payments that fall due towards the end of March 2018 (most of the Customer's rents are based on English quarter dates) for the period from the 1st April 2018 with the PRIME Contractor making direct payments to Landlords for the portion due up to and including the period 31st March 2018;
- (h) manage and execute 1st April 2018 rent reviews as the Customer has a number of revisionary leases where rent reviews fall on the 1st April 2018 and will therefore need to be actioned by the Supplier ahead of Operational Services commencing; and
- (i) manage and prepare for the payment of the 2018 rates which fall due at the beginning of April 2018.

4.2 The Supplier will during this period complete any TUPE transfer implications, recruit personnel, test their design principles, provide assurance to the Customer on progress, engage with the Customer and the Integrator to understand contract responsibilities and the Customer's estate, agree a forward plan of engagement to update key stakeholders on the service to be provided and complete any other key activities as identified in their Implementation Plan and mobilisation plan.

- 4.3 The Supplier shall comply with the requirements of Schedule 6 in relation to the Implementation Plan and Implementation Services.

5 Operational Services

Operational Services are services rendered from the Operational Services Commencement Date of 1st April 2018 to the expiry of the Term. It is recognised that Legal input may be required in relation to each of the requirements set out in this paragraph 5. The Customer will be procuring a Legal services provider to provide Legal input, as and when required, in relation to the Contract Services. The Supplier will be required to work with the Customer's appointed Legal Services Provider when delivering the Contract Services. This will include, but is not limited to instructing the Legal Services Provider and managing the process of entering a new Lease from Heads of Terms through to the signed Lease. Access to the Legal Services Provider will be agreed during the Implementation Phase and will either be by delegated authority or through a work order.

- 5.1 In discharging its responsibilities under this Contract the Supplier will undertake the Core Activities listed at paragraphs 5.3.1 to 5.3.6 on a regular basis and less frequent activities (based on property events) listed at paragraphs 5.3.7 to 5.3.15 on a call off basis on receipt of an order from the Customer or their nominated representative.

5.2

- (a) The activities below (5.3.1 to 5.3.6) are for the core requirements that should occur on a regular basis:
- (b) Activities listed as Call-Off Activities (5.3.7 to 5.3.15) will be required when requested by the Customer.
- (c) The activities listed as Optional Call-Off Activities may only be provided by the Supplier where the Supplier is permitted under the Framework Agreement by the Authority to provide some or all of such activities ("Permitted Activities") and has submitted a Price for one or more of the Permitted Activities.
- (d) In addition to delivering these services the Supplier will be required to provide an Account Management function that will deliver Key Management duties including understanding the Customer's Key Policies and Processes, working with the Integrator including receiving, agreeing and providing updates on Work Orders as well as offering 360 degree feedback on the relationship with the Integrator and the Customer's Supply Chain. The requirement also includes the production of management reports and responding to requests for information such as input for Freedom of Information requests. There is also a basic requirement to ensure excellent communications in the provision of the Contract Services. This will include but is not limited to ensuring the Customer's workforce is kept up to date with the full range of services being delivered and ensuring there is excellent communications with all internal and external stakeholders.

- 5.3 The anticipated activities under the headings above will include but are not limited to:

(a) Core Activity - Lease breaks and lease expiries

The Supplier may be tasked to provide comprehensive and timely advice for the Customer, as landlord or tenant, on the most appropriate course of action to be taken at an imminent break or expiry including, liaising with the Customer's appointed legal advisors. This can include lease termination. Advice, including support preparing lease exemption request business cases to GPU, will take full account of the Customer's best interest, the statutory position, the Customer's estate strategy, business needs, and the condition of the building, dilapidation liabilities and the state of the market.

(b) Core Activity - Landlord and Tenant issues including Landlord consents, service charges and claims

The Supplier shall ensure that the Customer's position as Landlord or Tenant is fully protected through the appropriate seeking, granting or use of licences, written approvals, consents, insurances etc. This will include but not be limited to changes the Customer may wish to make with respect to Security and FM arrangements.

The Supplier will be required to provide full analysis and recommendations on service charges and other claims received by the Customer including the results of any Landlord or Tenant negotiations or negotiations with third parties, which prove necessary.

The Customer intends to undertake a nationwide programme of replacement security system installations likely to fall in the 2018/19 Contract Year which could see a requirement for a significant number consents.

(c) Core Activity - Rating support services

The Supplier will provide professional advice, guidance, negotiation and assistance on non-domestic rating issues including a proactive strategy to mitigate changes in liability arising from new buildings and alterations. This will include as a minimum:

General administration

- Checking rates bills for accuracy of fact and calculation; and
- Providing forecasts for budgeting purposes including apportionments for lettings and estimates for new buildings.

Baseline liability

- Providing advice on baseline certificates to ensure accuracy and consequentially that liability can be calculated correctly during the application of transitional relief provision.

Full payment management

- Providing a full service checking and paying Customer rate bills, including general administration and baseline liability services to ensure the Customer's liabilities are correct and mitigated to the fullest extent without going to appeal and should include the potential initial consultation fees for compiled list and material change appeals.

Compiled list appeals

- Providing initial advice on assessment correctness and the likelihood of success;
- Forecasting and checking rate refund calculations from the Customer;
- Checking interest payment calculations issued by the Customer; and
- In light of any such appeals examine the baseline certificate to ascertain whether this can be challenged to produce further savings.

Material change appeals

Giving advice and undertaking activity on matters such as:

- Providing initial advice on whether any savings can be achieved;

- Correcting assessment consequent on “material changes” (within the meaning of relevant legislation);
- Applications to billing authorities for reduced payments because properties are unoccupied or partly occupied;
- Applications for charitable relief; and
- Appropriate splits and mergers.

2015 Revaluation (as amended)

Given the antecedent valuation date of 1 April 2013 as amended the Supplier shall, from time to time be required to:

- Give advice on the revaluation process;
- Formulate a proactive “Right First Time” strategy to mitigate changes in liability arising from the revaluation process;
- Ensure that the necessary data (including rental data) is supplied as necessary to support the accuracy of 2015 (as amended) “Non Domestic List assessments”; and
- Give advice on the likely financial impact of the revaluation.

General

It is important that public sector authorities pay the correct amount of rates. It will be the responsibility of the Supplier to take all reasonable steps to ensure this is achieved, resolving issues through the most suitable route.

(d) Core Activity - Strategic advice, including the preparation and development of an estates Strategy

The Supplier will work with the Customer to provide appropriate strategic advice and/or develop a comprehensive estate strategy setting out the business need and justification, any existing estate options or GPU strategies and implications, procurement and funding options and a recommended approach which demonstrably represents best whole life value for money. The evidence will be underpinned with full risk and benefits analysis to allow the Customer to make informed decisions. While the Integrator will be responsible for inputting into ePIMs the Supplier will be required to provide the information.

Advice can be provided in many areas including but not limited to the following:

- Asset management;
- Development appraisal;
- Investment appraisal / advice;
- Property performance including space utilisation; and
- Regeneration.

(e) Core Activity - General advice on estate and property management

The Customer may order advice on all aspects of estate and property management to support in the delivery of their statutory, regulatory and business objectives.

(f) Core Activity - General estate and property management duties

The Supplier will carry out general estate asset management duties including but not limited to:

- Day to day estate asset management of the commercial estate, integrating and liaising with current estate Suppliers as necessary;
- Day to day estate asset management of the residential estate;
- Ownership and responsibility for managing the Customer's estate information within their own property database, ensuring its management and maintenance is current and that it shall interface and be compatible with the Integrator's database for the estate. The Supplier will be required to build and maintain a property data base model which must include all property payment information, all property event dates such as lease breaks and rent reviews and highlight the Customer's lease obligations (which impacts / informs the Customer's Supply Chain);
- The Supplier will be required to input into the Integrator's overall property, facilities and estates management system which will accept data from the Supplier in common transfer formats details of which will be provided to the Supplier;
- Updating and maintaining a property asset management plan for implementation of agreed strategies;
- Contribute to the production of the Planned and Preventative Maintenance Schedule;
- Landlord management;
- Tenant management;
- Provide the Integrator with a record of payment of rent & rates and administration of service charges and other management information. as required;
- Safely retain a hard copy of all leases and associated documents. The Supplier must ensure all documents are appropriately stored such that they can be retrieved by the Customer or their nominated agent;
- Service charge management;
- Coordinate vacant property management for the Customer's FM and Security requirements for example enabling the Customer's Supply Chain to undertake regular site visits and the provision of appropriate security measures;
- Confirm the reason and potential duration in respect of any property non availability. Where appropriate produce a report on contracted rights of the non-availability including financial recompense. Where non availability of part or all is confirmed, undertake liaison with landlord for remedy;
- Financial management, including checking and paying Customer service charges, insurance and rent including general administration Other general management duties as specified by the Customer or their nominated agent;
- Supporting the Customer with Development Gain Activity as detailed in Schedule 11 (Asset (Development Gain) Management);
- Build and maintain a property cost document management database on an individual site basis that provides full lease information, rate and service costs and identifies the renewal and review points;

- The Supplier will be required to fully execute lease, rent, rates and service charge changes;
- Once per Quarter, the Supplier shall assist the Integrator or Customer (as the case may be) in the production of an occupancy report per site detailing the percentage space utilised and making recommendations for optimising this space through space consolidation, sub-letting or changing the usable purpose of the space to better manage the rateable value of the property (**Occupancy Report**). The Integrator is responsible for the production of the Occupancy Report, but will take data and or drafts from the Supplier to enable this;
- Collect rent and service charges, check receipts for accuracy and challenge any deemed incorrect, pass payments to the Customer, provide the Customer with a record of receipts in readable format for the Customer's accounts purposes, provide forecasts for the Customer budgeting purposes, financial appraisal of all the Customer's charging options, fully execute sub-let where instructed to do so;
- The Supplier's responsibilities will be to ensure the Customer's obligations and responsibilities are fully discharged in accordance with all relevant legislation including but not limited to statutory and regulatory compliance and the Landlord and Tenant Act 1954;
- As part of the Customer's Disaster Recovery Planning the Supplier will be expected to assist in a collaborative manner with the Customer's Estate Supply Chain to ensure that the Customer's business disruption is minimal; and
- Manage compliance with Energy Performance Regulations

(g) Call Off Activity - Acquisition and Disposal of freehold and leasehold property

Following agreement on a procurement strategy with the Customer, the Supplier will undertake and manage a comprehensive search of available property solutions, including availability on the Government estate via GPU. This may include the preparation of lists of potential properties, a comprehensive financial appraisal of all site options, assistance in identifying appropriate terms, identification of any surveys that may be required, advice on the most appropriate solution, undertaking negotiations, agreeing terms and conditions and acquiring the recommended asset. Advice will take full account of the Customer's best interest, the statutory position, the likely future use of the property, the condition of the building, the lease conditions and the Customer's financial position.

Where surplus property, space or holdings have been identified, the Supplier will provide an initial report with budget costs, valuations, forecast incomes, anticipated outcomes and timings which take into account market conditions and risks, together with a recommendation to achieve the most favourable outcome for the Customer. The actions required may include the preparation of a sub-letting potential.

Following agreement with the Customer, the Supplier will undertake and manage the marketing and disposal through to a satisfactory conclusion for the Customer and will provide a comprehensive final report to support a recommendation, including any need for claw back, with advice on amounts and mechanism.

(h) Call-Off Activity - Rent reviews

When requested, the Supplier will provide an initial report covering all significant facts setting out actions, negotiating strategies and anticipated outcomes. Following agreement with the Customer, the Supplier will undertake and manage negotiations through to a satisfactory conclusion for the Customer and will provide a comprehensive final report to support a recommendation on a figure for settlement.

In the event that a satisfactory settlement cannot be reached, the Supplier will advise on appropriate courses of action and maybe required to represent the Customer in any further proceedings.

(i) Call-Off Activity - Lease renewals

The Supplier will provide an initial report covering all significant facts, setting out actions, negotiating strategies and anticipated outcomes.

The Supplier will undertake and manage negotiations through to a satisfactory conclusion for the Customer and will provide a comprehensive final report to support a recommendation for agreement. Advice, including support preparing Lease Exemption Request business cases to GPU, will take full account of the Customer's best interest, subject to any overriding Exchequer interest, the statutory position, the Customer's estate strategy, business needs, the condition of the building and the state of the market.

(j) Call-Off Activity - Dilapidations

The Supplier will provide comprehensive and timely advice for the Customer, as Landlord or Tenant, on the most appropriate course of action to be taken on a dilapidations liability. Advice will take full account of the Customer's best interest, the statutory position, the likely future use of the property, the condition of the building, the lease provisions and the Customer's financial position.

Following agreement with the Customer, the Supplier will undertake and manage negotiations through to a satisfactory conclusion for the Customer and will provide a comprehensive final report to support a recommendation on a settlement.

Where it is concluded that the interests of the Customer would be best served by the completion of works identified within the dilapidations assessment, the Supplier will notify the Integrator who will arrange for the Customer estates supply chain to undertake the work.

(k) Call-Off Activity - Procurement strategy for property related issues

Following the agreement of a specific business need resulting in a property requirement, the Supplier will assess all aspects of the requirement and provide advice on the procurement strategy that provides the optimum, value for money solution. Options may include a commercial lease, temporary accommodation, serviced accommodation, Co-location with Local Authority or MOTO with an OGD.

Advice may also be required on:

- Whole life investment appraisals;
- Private funding of rationalisation schemes and property projects;
- Market trends and rental forecasts;
- Tax implications;
- Risk transfer;
- Residual values;
- Development agreements;
- Developer selection;
- Estate rationalisation and review; and
- Funding.

(l) Call-Off Activity - Development consultancy and advice

Assessment of private sector demand/market interest, the preparation of development and marketing briefs, the marketing and promotion of the development opportunity, the undertaking of master planning/feasibility work (possibly linking to the planning work area), the undertaking of valuations and development appraisals, advice on site assembly (linking to compulsory purchase), advice on delivery vehicles/mechanisms and implementation strategies, developer/partner selection. Provide strategic advice on developments in the property market including space utilisation to support the Customer in its overall strategic planning provide general corporate (property) funding/opportunities for generating income.

(m) Call-Off Activity - Valuations

Valuations to the appropriate standards (including RICS Valuations – Professional Standards 2012 (the ‘Red Book’)) are to be provided by the Supplier where necessary in the provision of the Contract Services. An agreed valuation sign off methodology must be agreed with the Customer. The Customer may require independent standalone valuations which can take a number of forms including:

- Full valuations In accordance with RICS Valuations – Professional Standards 2012; and
- Asset Valuations.

Valuations for financial reporting purposes, including capital charges, undertaken in accordance with the prevailing accounting standards as interpreted for the UK public sector and current professional standards guidance.

(n) Call-Off Activity - Planning

Town and Country planning advice and consultation is to be provided by the Supplier where necessary in the provision of the Contract Services. The Customer may require independent planning information and advice including consultations and negotiations with planning authorities and the submission of formal applications, notices, appeals and Section 106 Agreements, Section 278 Agreements (Highways) and CIL (Community infrastructure Levy).

Qualified planners may deliver advice including but not limited to:

- Strategic planning advice;
- Disposal related planning advice;
- Planning Applications;
- Planning Appeal;
- Development plan work on emerging plans;
- Statutory planning work;
- Affordable housing requirements; and
- Green travel plans.

(o) Call-Off Activity - Building surveying services

Pre-acquisition property

Where the Customer is considering the acquisition of a property, either freehold or leasehold, the Supplier may be called upon to undertake a pre-acquisition or more detailed technical due diligence inspection and report (to include, but not be

restricted to, detailed survey, reviewing technical data available for the property, planning restrictions, operation and maintenance data, organising environmental assessments, and considering implications for the building's potential use) taking into account the suitability for the intended use of the property. Where required, an outline feasibility study will be provided which identifies budget estimates for potential alteration works that may be required.

Liaison with the Integrator and the wider Customer's Estate Supply Chain, in support of them delivering the required action. The Customer may also require the retention and retrieval of computer aided design (CAD) floor plans. Where it is identified that a required floor plan does not exist there may be a requirement for the production of it. However such requests are expected to be very limited in number over the course of the contract.

Existing property

Survey data is to be provided by the Supplier where necessary in the provision of the Services. The Customer may require independent detailed surveys and reports including schedules of conditions, on the current condition of a property or asset including estimates of costs and priorities to bring the property to an agreed acceptable standard, optimum timing of maintenance and repairs, statutory obligations (including asbestos and equality legislation), health & safety issues/risks and whole life costs which should be attached to the occupancy agreement.

Liaison with the Integrator and the wider Customer's Estate Supply Chain, in support of them delivering the required action for procurement and management of the work. The Customer may also require the retention and retrieval of computer aided design (CAD) floor plans. Where it is identified that a required floor plan does not exist there may be a requirement for the production of it. However such requests are expected to be very limited in number over the course of the contract.

(p) Optional Call-Off Activity - Rating appeals

Baseline liability

Providing advice on baseline certificates and where appropriate challenging these to generate savings during transitional phasing.

Full payment management

Ensure the Customers liabilities are correct and mitigated to the fullest extent without going to appeal and should include the potential initial consultation fees for compiled list and material change appeals as set out below.

Compiled list appeals;

- Providing initial advice on the likelihood of success;
- Lodging formal appeals against the rating assessment and negotiating with the relevant body in an attempt to agree to a lower rateable value. For the avoidance of doubt the Supplier is required to challenge Rate Evaluations, rebates and changes of use, including seeking reductions for non or part occupancy; and
- In the light of any such appeals examine the baseline certificate to ascertain whether this can be challenged to produce further savings.

Material change appeals

- Giving advice on material change appeals;
- Lands/valuation tribunal hearings;

- Compliance with all necessary statutory/regulatory/practice statements that may apply;
- Advising the Customer or their nominated agent, as soon as it becomes apparent that a suitable agreement cannot be achieved through the normal appeal process;
- Recommending the most appropriate course of action to be taken and advising fully on the positive and negative implications;
- Consulting on the procurement of external assistance, for example appointing legal support;
- Professional support at tribunals;
- Advising on the potential costs that will flow from such action.
- Prepare statements of case; and
- Respond to replies as necessary and to comply with any timeframes applying.

(q) Optional Call-Off Activity - Compulsory Purchase

The Supplier will provide compulsory purchase advice. This will include, but not be restricted to, procedural, and negotiation advice. In circumstances where the Customer wishes to promote a compulsory purchase order ("CPO") to obtain powers to compulsorily acquire land from third parties the Supplier will provide strategic and procedural advice on how to obtain those powers. In these cases the Supplier will advise on all stages of the CPO process from inception through, public inquiry, possession and subsequent negotiation of property acquisition and compensation, if necessary by referral to the Lands Tribunal. In addition to this there may be a requirement for the negotiation and settlement of Part 1 claims.

In cases where the Customer owns or occupies land which is subject to a CPO being promoted by another body the advice will include potential objection to the CPO and appearance at public inquiry, if appropriate and the agreement of terms of withdrawal of objections/undertakings. It will also include negotiation for the sale of land and settlement of compensation, if necessary by referral to the Lands Tribunal.

(r) NOT USED

(s) Optional Call-Off Activity - Party Wall Awards

The Supplier will provide advice either when the Customer is the building owner developing a site but also when notices are served on the Customer as an adjoining owner to a development site.

Advice must be given so notices are served at the right time and awards entered into as required. Detailed schedules of condition are prepared.

(t) Optional Call-Off Activity - Way-leaves and easements

The Supplier will provide an initial report covering all significant facts, setting out actions, negotiating strategies and anticipated outcomes.

Following agreement with the Customer or their nominated agent, the Supplier will undertake and manage negotiations through to a satisfactory conclusion for the Customer and will provide a comprehensive final report to support a recommendation on a figure for settlement.

In the event that a satisfactory settlement cannot be reached, the Supplier will advise on appropriate courses of action and represent the Customer in any further proceedings.

(u) Optional Call-Off Activity - Other neighbourly matters

The Supplier will provide an initial report covering all significant facts, setting out actions, negotiating strategies and anticipated outcomes with respect to boundary disputes, crane and scaffold over sailing.

Following agreement with the Customer or their nominated agent, the Supplier will undertake and manage negotiations through to a satisfactory conclusion for the Customer and will provide a comprehensive final report to support a recommendation on a figure for settlement. In the event that a satisfactory settlement cannot be reached, the Supplier will advise on appropriate courses of action and represent the Customer in any further proceedings.

- Where the Supplier becomes aware of a potential dispute or challenge they shall inform the Integrator at the earliest opportunity. The Supplier will be expected to investigate the issue, identify options and suggest recommendations on how best to resolve the dispute/complaint. At all stages of the dispute resolution process the Supplier must ensure the Customer is updated on progress.
- Where the Supplier delivers services as set out in this document, the Customer retains the right to compete these same services where there is an unresolvable conflict of interest or the service is in support PFI legacy operations. The Customer will be the sole arbiter of determining such circumstances.

6 Payments

- 6.1 As part of managing and paying the Customer's property related invoices the Supplier will be required to have an escrow or equivalent holding account approved by the Customer on terms to be set out by the Customer in writing to be used for payments that provide the Customer with sufficient assurance/controls. The principles for the escrow or equivalent account shall be as follows:
- 6.1.1 the account shall be a designated account which shall only be used to receive and make payments to landlords and local authorities in accordance with the Contract Services;
 - 6.1.2 the monies standing to the credit of the account shall at all times belong to the Customer who shall be entitled to all interest on the account monies;
 - 6.1.3 all monies received for payment to and from landlords and local authorities shall be paid immediately into the account;
 - 6.1.4 the account monies shall not be mixed with any other monies including but not by way limitation, other client monies or monies of the Supplier;
 - 6.1.5 the Customer shall not be liable for bank charges or any charges in respect of the operation of the account;
 - 6.1.6 the Supplier shall establish strict controls and procedures for withdrawals of monies in the account including rights for the Customer to access monies in the account at all times on terms to be approved by the Customer;
 - 6.1.7 the Supplier shall not exercise any rights of set off, deduction or withholding of monies from the account;

- 6.1.8 all payments out of the account shall be made so as to ensure that monies are received by landlords and local authorities by the due date for payment and time shall be of the essence;
- 6.1.9 any payments due to the Customer for example for refunds and overpayments shall be immediately reported to the Customer and held and paid in accordance with instructions from the Customer from time to time;
- 6.1.10 during the Implementation Phase the Supplier shall comply with all of the requirements of the Customer in relation to the nominated bank with whom the account shall be established and the establishment of the account; and
- 6.1.11 during the Implementation Phase the Supplier shall obtain written confirmation from the bank with whom the account is held acknowledging that the monies standing to the account are client monies, are owned by the Customer and do not belong to the Supplier and shall produce evidence to the Customer.
- 6.2 The Supplier shall be required to comply with the procedures set out below and the process map which sets out a high level illustration of the property payment process.
- 6.3 Before submitting any claim for payment, Supplier to confirm that will need to it submits claims for payment to which it is entitled. The Supplier will be expected to make a declaration to this effect in a form to be specified by the Customer in writing.
- 6.4 The Supplier will be required to maintain a robust system of internal control which must include appropriate checks, monitoring arrangements and adequate records to demonstrate that it is entitled to make the claim.
- 6.5 The records maintained need to be sufficient not only to support any claims but also to allow internal management checks and independent validation by the Customer, the Integrator and other external bodies.
- 6.6 The Supplier shall provide such information to the Integrator as is require by the Integrator for it to monitor payments and to ensure that the Supplier has accurately captured all Landlord, (and the Customer as a tenant), obligations and ensuring these are fully exercised. The Supplier shall ensure all obligations are captured within the Integrator's System / Document Management Solution.
- 6.7 The Supplier will be required to provide the Integrator with a payment remittance and be required to build this into the Dashboard and other M.I. reporting stated elsewhere within this Annex 1 and the Contract, and as may be otherwise require by the Customer.

9 Additional Services

- 9.1 The Supplier shall provide the services set out in Schedule 11 (Asset (Development Gain) Management in accordance with Schedule 11.
- 9.2 Where incidental and necessary services, functions or responsibilities are not specifically set out in this Annex 1 but which form part of proper and satisfactory performance of the Contract Services which would reasonably be expected to form part of a Lease and Landlord Management type function, they shall be deemed to be included in the scope of the Contract Services. For the avoidance of doubt, should this be the case, no additional fees or payment shall be due from the Customer in relation to such incidental services, functions or responsibilities.
- 9.3 Subject to clause 2.1.1.5 of the Call-Off Terms, should any additional services be required over and above those set out in this Annex 1 and the Contract, then:
- (a) The pricing set out in Annex 2 (Contract Charges) shall apply;
 - (b) Where the cost of the Additional Services cannot be determined by reference to the Contract Charges the Supplier will be required to provide a fully costed quotation for the requirement.

10 Customer Satisfaction and Complaints Process

- 10.1 An important factor in the delivery of any service is ensuring customer satisfaction and being able to handle complaints, the Supplier is required to have an appropriate process in place to evaluate customer satisfaction and to act on findings to continually improve their service.
- 10.2 The Supplier will also be required to have an appropriate complaints process capable of making clear where and how complaints should be directed and a means of handling and responding to the complaints.

ANNEX 2 - CONTRACT CHARGES

1 DEFINITIONS

1.1 In this Annex the following definitions shall apply save where the context requires otherwise

Approval	approved by the Customer in writing
Call-Off Optional Services	those Contract Services identified as Call-Off Optional Services in Schedule 1 to the Call-Off Terms
Call-Off Services	those Contract Services identified as Call-Off Services in Schedule 1 to the Call-Off Terms
Certificate of Costs	a certificate of costs signed by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Customer in advance of issue of the relevant certificate) and substantially in the format set out in the Appendix 1 to this Annex 2
Contract Charges Change Date	Whichever of the following dates first occurs following the date the Customer's Estate increases or decreases by 10% or more being the 1 st April, 1 st July, 1 st October, 1 st January following the
Contract Year	means each period of twelve months from the Contract Commencement Date
Core Services	those Contract Services identified as core services in Schedule 1 to the Call-Off Terms
Exit Costs	the actual cost to the Supplier of providing the Termination Services where such costs are priced in the Exit Price in Appendix 2 to this Annex 2
Exit Price	the maximum prices to be paid for Termination Services provided during the Termination Assistance Period for the cost items set out against the cost lines in the Exit tab in Appendix 2 to this Annex 2
Final Statement	the final statement to be submitted by the Supplier under Paragraph 8 of this Annex 2
Milestone Achievement Certificate	The certificate issued by the Customer confirming that Milestone has been achieved;
Milestone Deduction	means such sum as the Customer shall reasonably determine reflects its Losses for a failure of the Supplier to achieve a Milestone on the Milestone Date and/or a failure to achieve the relevant Milestone in accordance with the standards required by the Customer
Milestone Payment	means the amount stated in Paragraph 2.1 of this Annex 2
Milestone Prices	the amounts stated as the Supplier's prices for the Implementation Services carried out to achieve individual

Milestones as set out in Appendix 2 to this Annex 2

Notified Sum	the amount stated in the Supplier's application for payment
Price	means a price for a supply set out against a cost line for each Contract Year in Appendix 2 to this Annex 2
Relevant Month	the Month during which Contract Services were carried out for which payment is sought in an application by the Supplier
Service Credit Cap	80% of Supplier Profit Costs
Supplier Profit Costs	The Supplier's Profit Costs for each Contract Year as determined by the Customer during the first six weeks of the Implementation Phase
Supporting Documentation	sufficient information in writing to enable the Customer reasonably to assess whether the Contract Charges and/or other sums due from the Customer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates, copies of invoices, receipts, details of salary and other benefits in fact paid, payslips and contracts of employment and any other relevant documents setting out employment terms and/or any such other evidence to demonstrate cost incurred by the Supplier including any information required to demonstrate that Transformation Costs or Exit Costs are payable by the Customer together with such other information as the Customer may reasonably require
Transformation Cost	<p>the actual demonstrated cost to the Supplier of the following:</p> <ul style="list-style-type: none">(a) salaries;(b) contractual benefits including payments in lieu of notice;(c) employer NI contributions;(d) employer pension contributions;(e) statutory redundancy payments calculated under Part IX of the Employment Rights Act 1996;(f) re-training and/or redeploying people to provide the Contract Services for the purpose of avoiding redundancy;(g) any enhanced contractual redundancy payment and other contractual benefits which may be due on redundancy (including pension top up entitlements);(h) compensation payments made to people by way of compromise of their employment rights; and <p>in respect of the people that transferred to the Supplier</p>

under the Employment Regulations during the Operational Phase, provided always and to the extent that such Transformation Costs:

(i) are not People Costs;

(ii) are incurred in the Transformation Phase;

(iii) do not include any costs which are incurred as a consequence of any claim by any employee including but not limited to any claim for unfair dismissal, wrongful dismissal, discrimination, breach of its employment contract (including but not limited to for unpaid notice), failure to provide a contractual employment benefit (including health insurance) or any claim arising in relation to any employee's contractual and employment rights whether such costs arise as a result of damages, legal costs or otherwise;

(iv) are not otherwise recoverable under Schedule 7 (Staff Costs);

(v) claimed under limbs (e), (f), (g) and (h) have been Approved under Paragraph 5.3 below, and

(vi) do not arise as a result of the Supplier amending any employee's contractual entitlements so that they are more favourable than those in place as a result of their transfer under the Employment Regulations.

Transformation Phase the period of six months commencing on the Operational Service Commencement Date

2 MILESTONE PAYMENTS IN IMPLEMENTATION PHASE

2.1 Upon achievement of a Milestone, the Supplier shall be entitled to the Milestone Price in respect of such Milestone subject to any deduction for a Milestone Failure when the Customer shall be entitled to make a Milestone Deduction from the Milestone Payment. An application for a Milestone Payment may be submitted upon completion of the relevant Milestone. Each application relating to a Milestone Payment shall be supported by:

2.2.1 a statement by the Supplier of the amount considered to be due and the basis upon which it is calculated including:

- (i) a description of the Implementation Services provided in achieving each Milestone; and
- (ii) the dates on which such Implementation Services were performed and completed; and

2.1.2 a Milestone Achievement Certificate for each Milestone Achieved.

2.2 Clause 3.2.1 of the Call-Off Terms shall apply.

3 CONTRACT CHARGES IN OPERATIONAL PHASE

3.1 During the Operational Phase the Supplier will be paid the Contract Charges. The Contract Charges are calculated as follows:

- 3.2 In relation to Core Services and subject to Paragraphs 3.6 and 3.7 the Price is calculated by applying a fixed monthly charge and is calculated as follows:
- 3.2.1 In the first Contract Year, the Supplier shall be paid a fixed sum for each of the Core Services for the period from the Operational Services Commencement Date to 17 September 2018 for the duration of the Operational Services.
 - 3.2.2 Subject to Paragraph 3.2.3 below, in the second and subsequent Contract Years, the Supplier shall be paid one twelfth of the Contract Charges for each of the Core Services for that Contract Year.
 - 3.2.3 In the final Contract Year the Contract Charges shall be payable in 5 equal instalments with the final and final payment being pro rata from the 1st April in that Contract Year to the end of the date of termination or expiry of the Contract.
- 3.3 In relation to Call Off Services the Price is calculated by applying the charging structure set out in Appendix 2 of this Annex 2 and comprises fixed fee and hourly rates excluding lunch breaks and fees. All hourly rates are inclusive of travel and other related expenses.
- 3.4 In relation to Optional Call Off Services the Price is calculated by applying the charging structure set out in Appendix 2 of this Annex 2 and comprises fixed fee and hourly rates excluding lunch breaks and fees. All hourly rates are inclusive of travel and other related expenses.
- 3.5 Where the Price is based on hourly rates, the Supplier shall not charge more than 8 (eight) working hours in one day. The maximum hourly rates for each category of the Supplier's staff (in each case exclusive of VAT) are listed in Appendix 2 of this Annex 2.
- 3.6 All Prices are fixed for the duration of the Contract (subject to adjustment for any Extended Contract Term) in accordance with Annex 1 and an adjustment for Core Services where the Customer's Estate increases or decreases by 10% or more in accordance with Paragraph 3.7.
- 3.7 If the number of properties in the Estate increases or decreases by 10% or more from the number in the Estate as at the Contract Commencement Date, the Parties shall immediately enter into good faith negotiations to discuss and agree what if any changes should be made to the Contract Charges for the Core Services as a result in the change in the number of the Estate. In the event of a failure to agree, the matter shall be referred to dispute resolution in accordance with Clause 24 (Dispute Resolution). The revised Contract Charges shall take effect from the Contract Charges Change Date. Until such time as the revised Contract Charges are agreed, the Contract Charges set out in Appendix 2 shall continue to be payable and any adjustment to the Contract Charges shall be backdated to the Contract Charges Change Date and reconciled in the month following agreement to any such changes.
- 3.8 The Price is the maximum amount that the Supplier is entitled to be paid in respect of the provision of a supply set out against a cost line in Appendix 2 subject to adjustment in accordance with Paragraph 3.7.
- 3.9 An application for Contract Charges may be submitted no later than the twentieth Working Day of each month. Each application for Contract Charges shall be supported by:
- 3.9.1 a statement by the Supplier of the amount considered to be due and the basis upon which it is calculated including:
 - (i) a description of the Contract Services provided in the Relevant Month;
 - (ii) the dates on which such Contract Services were performed;
 - (iii) the Supplier's calculation of the Contract Charges; and
 - 3.9.2 a Certificate of Costs with Supporting Documentation; and
 - 3.9.3 the Supplier's calculation of:

- (a) any Deductions;
- (b) entitlement of the Customer to any other payment by the Supplier under this Contract; and/or
- (c) the entitlement of the Customer to payment of any over-payment made to the Supplier.

4 INVOICING AND PAYMENT TERMS

- 4.1 This Paragraph 4 applies to all applications for payment other than an application pursuant to the Final Statement.
- 4.2 All applications for payment (whether for a Milestone Payment or a Contract Charge) shall be accompanied by:
 - 4.2.1 all relevant Supporting Documentation;
 - 4.2.2 details of the total Charges gross and net of any applicable Deductions and, separately,
 - 4.2.3 details of any VAT or other sales tax payable in respect of Charges;
 - 4.2.4 details of any Milestone Deductions and Deductions that apply to the Charges detailed on the invoice;
 - 4.2.5 details of any Delay Payments notified to the Supplier in writing by the Customer;
 - 4.2.6 reference to any reports required by the Customer in respect of the Contract Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for Approval by the Customer, then to any such reports as are validated by the Customer in respect of the Contract Services);
 - 4.2.7 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
 - 4.2.8 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).
- 4.3 The Customer shall be entitled to issue a notice to the Supplier stating the amount that it considers to be due and the basis on which it is calculated. Subject to Paragraph 4.5, the amount due to the Supplier (or the Customer) in respect of a Milestone Payment or a Contract Charge (as the case may be) shall be the amount stated in the Customer's notice under this Paragraph 4.3.
- 4.4 In the absence of a notice by the Customer under Paragraph 4.3, and subject to Paragraph 4.5, the amount due to the Supplier (or the Customer) in respect of a Milestone Payment or a Contract Charge (as the case may be) shall be the amount stated in respect of the Milestone or Contract Charge (as the case may be) in the Supplier's application under Paragraph 4.2.
- 4.5 If the Customer (or the Supplier) intends to pay less than the Notified Sum, in the case of a Contract Charge, it may issue a notice stating the amount which it considers to be due on the date of such notice and the basis upon which it is calculated.
- 4.6 If the Customer intends to pay less than the Notified Sum in respect of a Milestone Payment due to a delay in the performance of a Milestone and/or the Customer is dissatisfied with the quality of the Suppliers performance in reaching a Milestone, it may issue a notice no later than the date which is one day before the date for payment for such Milestone Payment stating the amount which it considers to be due on the date of such notice after making a Milestone Deduction and the basis upon which it is calculated.

- 4.7 The Supplier and the Customer shall in good faith discuss the proposed Milestone Deductions to ensure that it fairly compensates the Customer for the Supplier's failures and agree the Milestone Deduction or any adjustment to the Milestone Deduction. In the event of dispute clause 24 (Dispute Resolution) shall apply.
- 4.8 No sooner than six Working Days after the due date, the Supplier (or the Customer as the case may be) may submit an invoice for the Notified Sum.
- 4.9 Any invoice shall be cross referenced to the application to which it relates and shall be submitted to:
- The Finance Controller, DWP Estates, Department for Work and Pensions, Commercial Directorate – Estates and FM, Westminster Job Centre, Chadwick Street, London SW1P 2ES,
- with a copy to such other person and at such place as the Customer may notify to the Supplier from time to time.
- 4.10 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing. Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds.
- 4.11 The Customer shall regard an invoice as valid only if it complies with the provisions of this Annex 2. Where any invoice does not conform to the Customer's requirements set out in this Annex 2, the Customer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 4.12 The Supplier undertakes to provide to the Customer any other documentation reasonably required by the Customer from time to time to substantiate any invoice.
- 4.13 Subject to the relevant provisions of this Annex 2, the Customer (or the Supplier as the case may be) shall make payment to the Supplier or the Customer (as the case may be) by the final date for payment.

5 TRANSFORMATION COSTS

- 5.1 Subject to the following parts of this Paragraph 5, the Supplier shall be entitled to recover any Transformation Costs incurred during the Transformation Phase (which is part of the Operational Phase) provided always that the Supplier shall not be entitled to recover any Transformation Costs which fall under limbs (e), (f), (g) and (h) of the definition of Transformation Costs unless the same have been Approved by the Customer before they have been incurred (such approval not to be unreasonably withheld or delayed);
- 5.2 Where Approval is sought for Transformation Costs under Paragraph 5.1, the Supplier shall provide with its proposal with sufficient information for the Customer to understand:
- 5.2.1 why the Supplier considers that the course of action which will give rise to the Transformation Costs is required and justified, including, without limitation, for the purposes of establishing and delivery of the Supplier's agreed operating model;
 - 5.2.2 what alternative courses of action the Supplier has considered and their likely cost;
 - 5.2.3 the mitigation action taken by the Supplier to avoid or reduce the Transformation Costs including requiring the employee to work their notice, re-deploying them and or transfer to a different role;
 - 5.2.4 the risks that the Supplier has taken into account prior to seeking Approval; and
 - 5.2.5 the Supplier's calculation of the Transformation Costs for which Approval is sought.
- 5.3 Subject to the receipt of reasonably adequate information from the Supplier as set out in Paragraph 5.2 above, the Customer shall provide a response within ten (10) Working Days of receipt of the Proposal. Where the Customer rejects a Proposal without comment and the

Supplier considers that it will, as a consequence, incur additional costs after the Transformation Phase for which it will be inadequately remunerated, the Supplier may refer the issue to the dispute resolution procedure set out in clause 24 of the Call-Off Terms .

- 5.4 Following submission of an application for payment which includes Transformation Costs, the parties shall meet and jointly carry out a review to assess the extent to which the Supplier has incurred such Transformation Costs in respect of the staff that transferred to the Supplier under TUPE on or after the Operational Service Commencement Date as a result of the commencement of any of the Contract Services.
- 5.5 Where the Supplier can demonstrate to the Customer's reasonable satisfaction that it has incurred a Transformation Cost, subject to the Supplier having taken all reasonable steps to reduce the relevant costs so far as legally permissible, the amount of such Transformation Cost shall be recoverable under this Annex.
- 5.6 Where the Customer is reasonably satisfied that:
- 5.6.1 as regards any of the types of cost referred to in limbs (a) to (d) of the definition of Transformation Costs, the actual cost to the Supplier of a particular role and job description specifically priced for each Contract Year against a cost line in the Supplier's tendered prices in Appendix 2 is higher than the cost included in such cost line;
 - 5.6.2 the relevant difference in cost is attributable to the application of the Employment Regulations and the need for the Supplier to employ in respect of the role and job description in question a person who transferred to the Supplier under the Employment Regulations during the Operational Phase; and
 - 5.6.3 the Supplier has taken all reasonable steps to minimise the relevant cost differential so far as legally permissible,
- then:
- 5.6.4 as regards the amount of any such cost differential which is incurred during the Transformation Phase, such amount shall (for the avoidance of doubt) be treated as a Transformation Cost;
 - 5.6.5 as regards the amount of any such cost differential which is incurred at any time after the Transformation Phase, such amount shall not be treated as a Transformation Cost but shall nonetheless be recoverable from the Customer subject to and in accordance with the following terms:
 - (a) to the extent that such proposal is approved by the Customer, such approval not to be unreasonably withheld or delayed having regard to the matters set out in Paragraphs 5.6.1 to 5.6.3 of this Annex 2, the relevant Contract Charges shall be adjusted accordingly; and
- 5.7 For the avoidance of doubt, where at any time after the end of the Transformation Phase the Supplier incurs any cost in connection with:
- 5.7.1 the employment (including termination of employment, whether by reason of redundancy or otherwise) of any person for a particular role or job description that was not specifically priced for against a cost line in the Supplier's tendered prices under "People" in Appendix 2; and/or
 - 5.7.2 the termination of employment (whether by reason of redundancy or otherwise) of any person for a particular role or job description that was specifically priced for against a cost line in the Supplier's tendered prices under "People" in Appendix 2,
- such cost shall not be recoverable from the Customer, whether as a Transformation Cost or otherwise, except and to the extent otherwise specifically agreed by the Customer as a Variation.

- 5.8 Any dispute arising in connection with the review processes described in Paragraphs 5.1 to 5.7 of this Annex shall be resolved in accordance with the terms of the dispute resolution procedure set out in clause 24 of the Call- Off Terms.

6 EXIT COSTS

During the Termination Assistance Period the Supplier will be entitled to receive Exit Costs in accordance with Schedule 10 (Supplier Exit).

7 PERFORMANCE DEDUCTIONS

- 7.1 Service Credits shall be calculated by reference to Schedule 1 of the Call-Off Terms (Service Levels) and this Paragraph 7.
- 7.2 For each Service Period the Supplier shall:
- 7.2.1 identify all KPI Performance Failures arising in the relevant Service Period; and
 - 7.2.2 aggregate the total Service Credits relating to such KPI Performance Failures identified pursuant to Paragraph 7.2.1 by reference to Schedule 1 of the Call-Off Terms (Performance Levels); and
 - 7.2.3 comply with the terms of Paragraphs 3 and 4 of this Annex 2.
- 7.3 The operation of the Service Credit Cap shall not affect the continued accrual of Service Failure Points in excess of such financial limit in accordance with the provisions of Schedule 1 of the Call-Off Terms.
- 7.4 Service Credits shall be shown as a Deduction from the amount due from the Customer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

8 FINAL STATEMENT

- 8.1 Within six months of the end of the Termination Assistance Phase (or if there is none, termination), the Supplier shall submit to the Customer its Final Statement in accordance with Paragraph 8.2.
- 8.2 The Final Statement shall set out the Supplier's statement of the Final Account (the **Supplier Final Account Balance**) being,
- 8.2.1 where the Contract has not been terminated:
 - (a) the aggregate Contract Charges charged by the Supplier in providing the Operational Services under this Contract;
 - (b) aggregate Savings Payments to which the Supplier considers it is entitled;
 - (c) aggregate Deductions to which the Customer is entitled under this Contract;
 - (d) total payments made by the Customer in respect of the Contract Services;
 - (e) any outstanding amounts that the Supplier considers to be due to it or to the Customer (as the case may be) and the basis upon which it is calculated,
 - 8.2.2 where the Contract has been terminated the appropriate calculation of the Supplier's entitlement under Clause 9 of the Call-Off Terms as the case may be.
- 8.3 Within three (3) months of receipt by the Customer of the Final Statement, or where no Final Statement is received from the Supplier at any time after the Final Statement should have been received, the Customer shall submit to the Supplier its assessment of the amount that it

considers to be due to the Supplier or to the Customer (as the case may be) and the basis upon which it is calculated (the **Customer Final Account Balance**).

- 8.4 Subject to Paragraph 8.7, the amount due to the Supplier or the Customer in respect of the Final Account shall be the amount stated in the Customer's notice under this Paragraph.
- 8.5 In the absence of submission by the Customer of a Customer Final Account Balance by the time required by Paragraph 8.3, and subject to Paragraph 8.7, the amount due to the Supplier or the Customer in respect of the Final Account shall be the Supplier Final Account Balance.
- 8.6 The due date for payment of the Customer Final Account Balance or the Supplier Final Account Balance (as the case may be) is three (3) months after receipt of the Final Statement. The final date for payment of such sum is the date which is three months after the date on which an invoice for the Customer Final Account Balance or the Supplier Final Account Balance (as the case may be) was submitted.
- 8.7 If the Customer or the Supplier (as the case may be) intends to pay less than the Customer Final Account Balance or the Supplier Final Account Balance (as the case may be), it may issue a notice no later than the date which is one day before the final date for payment for such Customer Final Account Balance or the Supplier Final Account Balance (as the case may be) stating the amount which it considers to be due on the date of such notice and the basis upon which it is calculated.
- 8.8 No sooner than six Working Days after the due date, the Supplier (or the Customer as the case may be) may submit an invoice for the Customer Final Account Balance or the Supplier Final Account Balance (as the case may be).
- 8.9 Subject to the relevant provisions of this Schedule, the Customer or the Supplier (as the case may be) shall make payment of the Customer Final Account Balance or the Supplier Final Account Balance (as the case may be) to the Supplier or to the Customer (as the case may be) by the final date for payment.
- 8.10 Either party may refer a dispute as to the amount due to the Supplier or the Customer (as the case may be) under this Paragraph 8 to the Dispute Resolution Procedure under the Call-Off Terms.

Appendix 1

I **[name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Customer]** of Cushman & Wakefield Tie Leung Limited (formerly known as Debenham Tie Leung (DTZ) Limited, certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the DWP Lease and Landlord Management Services Contract (**the “Contract”**) in relation to the following [Milestone/Contract Charge]:

[Insert details of Milestone/Contract Charge]

- 9 has been reasonably and properly incurred in accordance with *[name of Supplier]*'s books, accounts, other documents and records;
- 10 is accurate and not misleading in all key respects; and
- 11 is in conformity with the Contract and with all generally accepted accounting principles within the United Kingdom.

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

Appendix 2

Contract Charges

The agreed charging structure is embedded below.

DOCUMENT REDACTED

ANNEX 3 (VARIATIONS AND/OR SUPPLEMENTS TO THE CALL-OFF TERMS)

Definitions

The following definitions shall be inserted in Clause 1.1 of the Call-Off Terms:

“Affiliate”	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Approval”	means approved by the Customer in writing and Approve, Approves and Approved shall be construed accordingly;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Customer's Assets;
“Audit Rights”	the audit and access rights referred to in Clause 27;
“Baseline Security Requirements”	the Customer's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 16 (Security Management), as updated from time to time by the Customer and notified to the Supplier;
“Call Off Activities”	shall have the same meaning as Call Off Services as defined in Annex 2
“Contract Month”	shall commence from the Operational Services Commencement Date and reflects traditional calendar months;
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and Controls and Controlled shall be interpreted accordingly;
“Core Activity”	Shall have the same meaning as Core Activity as defined in Annex 2
“Core Services”	Shall have the meaning set out in Annex 2
“Customer Data”	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are: <ul style="list-style-type: none"> (a) Supplied to the Supplier by or on behalf of the Customer; and/or (b) Which the Supplier is required to generate, process, share or transmit pursuant to this Contract; or any Personal Data for which the Customer is the Data Controller;
“Customer's Estates Supply	Shall have the same meaning as Customer's Supply

Chain	Chain
“Customer's ICT System”	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with the Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Customer's ICT System or which is necessary for the Customer to receive the Contract Services;
“Customer's Offshoring Policy”	means the Customer's policy and procedures in relation to hosting or accessing the Customer's ICT System or official information outside of the UK or use of Landed Resources, as advised to the Supplier by the Customer from time to time;
“Customer's Policies”	Those policies of the Customer set out in Schedules 9 and Schedule 15 including any additional and substitute policies and any policies and procedures notified to the Supplier by the Customer from time to time in accordance with clause 2.1.2.4
“Data Protection Act 1998”	means the Data Protection Act 1998 and any replacement legislation coming into effect from time to time including (without limitation) the GDPR together with any codes of practice or other guidance issued by any competent regulatory authority;
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, a Milestone Deduction or any other deduction, compensation and/or other amount which is paid or payable to the Customer under this Contract;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <p>(a) in the case of the Customer, of its employees, servants, agents; or</p> <p>(b) in the case of the Supplier, of any Supplier Related Party,</p> <p>in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other;</p>
“Delay”	<p>(a) a delay in the achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or implementation of a Milestone by the relevant date set out in the Implementation Plan;</p>
“Documentation”	descriptions of the Contract Services and Performance Indicators, details of the Supplier's System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), 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 as:

- (a) is required to be supplied by the Supplier to the Customer under this Contract ;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Contract Services;
- (c) is required by the Supplier in order to provide the Contract Services; and/or
- (d) has been or shall be generated for the purpose of providing the Contract Services;

“Employment/Employee Liabilities”

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“Extension Period Supplier profit Rate”	means the Supplier's profit to be provided by the Supplier in a manner consistent with the breakdown for the original Contract Charges;
“Estate”	The Customer's estate of properties as amended from time to time
“Exit Detailed Solution”	has the meaning given to it in Schedule 10 (Supplier Exit);
“Financial Distress Event”	has the meaning given to it in Paragraph 3 of Schedule 14 (Financial Distress);
“Financial Distress Service Continuity Plan”	a plan setting out how the Supplier will ensure the continued performance and delivery of the Contract Services in accordance with this Contract in the event that a Financial Distress Event occurs;
“Former Supplier”	has the meaning given in Schedule 7.1 (Staff Transfer);
“GDPR”	means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
“General Anti-Abuse Rule”	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“GPU”	means Government Property Unit
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Implementation Phase”	The period from the Contract Commencement Date to the Operational Services Commencement Date
“Implementation Services”	the services to be provided by the Supplier pursuant to Annex 1 and Schedule 6 and/or as otherwise required by or reasonably to be inferred from this Contract;
“Integrator”	means the supplier named in the Integrator Agreement
“Integrator Agreement”	means the agreement entered into by the Customer and the Integrator on 13 June 2017.
“IT Environment”	the Supplier's System and any interface with or element of the Customer's ICT System for which the Supplier is responsible (including, without limitation, any web pages, APIs or portals);
“Intervention Clause”	has the meaning given to it in clause 26.5
“Intervention Notice”	has the meaning given to it in clause 26.5
“Intervention Period”	has the meaning given to it in clause 26.5
“Intervention Trigger Event”	(a) any event falling within the definition of a Supplier Termination Event; (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the

	Contract Services or any material part of the Contract Services;
	(c) the Supplier accruing in aggregate five hundred and sixty two (562) or more Service Failure Points (in terms of the number of points allocated) in any period of three (3) Months;
	(d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or
	(e) the Supplier not Achieving a Milestone by its relevant Milestone Date;
“Landed Resources”	means any foreign nationals whom the Supplier has caused to be brought to the United Kingdom to provide the Contract Services.
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Customer when the Supplier has achieved a Milestone,
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be achieved;
“Milestone Payment”	a payment identified in Schedule 1 (Contact Charges) to be made following the issue of a Milestone Achievement Certificate and Milestone Payments shall be construed accordingly;
“Milestone Price”	has the meaning given in Schedule 1 (Contract Charges);
“Month”	Is a traditional calendar month;
“Notifiable Default/Event”	Is: <ul style="list-style-type: none"> • A default by the Supplier which is material and is capable of remedy; or • A Critical Performance Failure.
“Occasion of Tax Non-Compliance”	(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

	(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Commencement Date or to a civil penalty for fraud or evasion;
“Operational Services”	means the services to be delivered by the Supplier from and including the Operational Services Commencement Date as more particularly described in Annex 1 and/or as otherwise required by or reasonably to be inferred from this Contract;
“Operational Services Commencement Date”	1 April 2018
“People Costs”	as set out in the Contract Charges table in Appendix 1 to Schedule 1 under the heading of People.
“Personal Data”	personal data (as defined in the Data Protection Act 1998) which is Processed by the Supplier or any Sub-contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Agreement;
“Personal Data Breach”	a breach of security leading to the accidental or unlawful destruction, loss, alteration, damage, unauthorised disclosure of, or access to, Personal Data;
"Price"	has the meaning given in Annex 2;
“PRIME Contractors”	means <ul style="list-style-type: none"> (a) Trillium (PRIME) Limited a company registered and incorporated in accordance with the laws of England and Wales registered under number 3258384 and having its registered office at 140 London Wall, London EC2Y 5DN; and (b) Trillium (PRIME) Property GP Limited a company registered and incorporated in accordance with the laws of England and Wales registered under number 3424587 and having its registered office at 140 London Wall, London EC2Y 5DN, and references to PRIME Contractor shall be construed accordingly;
“PRIME Contract”	the contracts between (1) the Customer; and (2) each PRIME Contractor dated 27 March 1998 as expanded by The Expanded Prime Contract dated 15 December 2003 and relating to the delivery of the PRIME Services;
“PRIME Services”	the works and services to be delivered by the PRIME Contractors pursuant to the terms of the PRIME Contracts;
“Project Board”	the body described in Paragraph 2 of Schedule 12 (Governance);
“Proscribed Conduct”	Is: <ul style="list-style-type: none"> (a) agreeing, permitting or entering into any

arrangement (whether by contract, joint venture or otherwise) other than by this Contract to carry out the services provided to the Customer under the Integrator Agreement, either as Integrator or as any part of the Integrator's supply chain;

- (b) receiving or being entitled to receive any benefit financial, commercial or otherwise which is derived expressly or impliedly from the Integrator save as expressly permitted by this Contract;
- (c) being connected by a shareholding (controlling or otherwise) or by any arrangement (whether written or oral, by contract (other than this contract), joint venture or otherwise) in the Integrator or its Affiliates or its sub-contractors;
- (d) allowing the Integrator, its Affiliates or sub-contractors to exercise any control or influence over the Supplier or a Subcontractor save as required in the performance of the Integrator's duties under the Integrator Agreement;
- (e) exercising any control or influence over or permitting any Sub-contractor to exercise and control or influence over the Integrator or its supply chain; or
- (f) appointing the Integrator or any Affiliate of the Integrator as Subcontractor

“Quarter”

Means each quarter commencing 1st April, 1st July, 1st October and 1st January in each year

“Rectification Plan”

a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

“Rectification Plan Failure”

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Customer within the timescales specified in Clauses 26.2.4 (Submission of the draft Rectification Plan) or 26.2.7 (Agreement of the Rectification Plan);
- (b) the Customer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 26.2.7 (Agreement of the Rectification Plan);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 26.2.2 (Notification); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the

	material Default;
	(d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the three (3) Months subsequent to the Month in which the initial Material KPI Failure occurred; and/or
	(e) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;
“Rectification Plan Process”	the process set out in Clauses 26.2.4 (Submission of the Rectification Plan) to 26.2.7 (Agreement of the Rectification Plan);
“Registers”	Has the meaning given in Schedule 10 (Supplier Exit);
“Remedial Advisor”	the person appointed pursuant to clause 26.5
“Remedial Advisor Failure”	has the meaning given to it in clause 26.5
“Replacement Services”	any services which are the same as or substantially similar to any of the Contract Services and which the Customer receives in substitution for any of the Contract Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Customer from time to time (or where the Customer is providing replacement Services for its own account, the Customer);
“Required Action”	has the meaning given to it in Clause 26.7.1
“Service Levels”	Means the service levels and performance indicators set out in Schedule 1
“Step-In Notice”	has the meaning given to in clause 26.7.1
“Step-In Trigger Event”	is <ul style="list-style-type: none"> • any event giving rise to a right to terminate this Contract; • a default by the Supplier which is materially preventing or delaying the performance of the Contract Services or a material part of them; • circumstances which the Customer consider to amount to an emergency notwithstanding there is no breach of the Contract by the Supplier; • the Customer being advised by a regulatory body that the exercise of its step-in rights is necessary; • the need for the Customer to exercise its step-in rights to discharge a statutory duty; • fire, leaks, act of god, storm damage, floods or

	similar events of force majeure;
“Step-Out Date”	has the meaning given to it in clause 26.7;
“Step-Out Notice”	has the meaning given to it in clause 26.7;
“Step-Out Plan”	has the meaning given to it in clause 26.7;
“Successor Body”	means a body which is not a Central Government Body or a body which is not a Central Government Body who succeeds the Customer;
“Supplier's Profit Costs”	has the meaning given in Annex 2
“Supply Chain”	means the Supplier and the principal suppliers to the Customer of the following services: <ul style="list-style-type: none"> • landlord and lease management; • furniture fittings & equipment; • security; and • project works each a Customer Supply Chain Member;
“Supplier System”	means the information and communications technology system used by the Supplier in implementing and performing the Contract Services including software, the equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer's System);
“Supplier Termination Event”	any circumstance set out in clause 8;
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 10 (Supplier Exit);
“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Notice”	a written notice of termination given by the Customer to the Supplier notifying the Supplier of the intention of the Customer to terminate this Contract on a specified date and setting out the grounds for termination;
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Detailed Solution, including those activities listed in Annex 1 of Schedule 10 (Supplier Exit), and any other services required pursuant to the Termination Assistance Notice;
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

The following clauses shall be added as new clauses to the Call-Off Terms or shall amend the existing clauses of the Call-Off Terms

Clause 1.1 Amendment	The definition of Contract Services in Clause 1.1 of the Call-Off Terms shall be amended by the addition of the words “including but not limited to the Implementation Services and Operational Services”.
Insert New Clause 1.4.3.4	1.4.3.4 “to a devolved government or assembly (or agency thereof) which performs any of the functions that previously had been performed by the Customer”.
Clause 2.1 .1	Deleted and removed
Insert new Clause 2.1.1.1	“...2.1.1 The Supplier shall supply the Contract Services to the Customer in accordance with the provisions of the Contract including the Service Levels and Key Performance Indicators (if any) stipulated in the Letter of Appointment and Schedule 1 (Service Levels).and the terms of Schedule 6 ;
Clause 2.1.1.2	<p>2.1.1.2 The Supplier, using the standard of care required by the Contract, to carry out all activities, operations and functions expressly stated in or reasonably to be inferred as required by the Contract and Annex 1 in order to:</p> <ul style="list-style-type: none"> (a) meet the objectives of; (b) achieve the outputs described in; and (c) provide all Contract Services described in or which may be reasonably inferred as being the responsibility of the Supplier, from Annex 1.
Clause 2.1.1.3	<p>2.1.1.3 Implementation Services and interaction with Operational Services:</p> <ul style="list-style-type: none"> (a) The Supplier shall deliver the Contract Services to further the following high level objectives: (b) to govern demand management across the Customer and the Customer's Estate and enable a future workforce of the right size, in the right locations to better meet future business needs in line with the Customer's future blueprint; (c) continue to build a skilled, expert and confident workforce which understands its Customer and delivers extraordinary business performance and customer service; (d) implement the Customer's location strategy, optimising alignment with the Customer's organisation design, the cross Government hub strategy and synergy with the Government Procurement Strategy; (e) to meet the expiry requirements and achieve a successful exit from the PRIME Contract and enable a managed transition to the new delivery model. The Supplier will be required to work with the outgoing PRIME Contractor to ensure a successful transition; (f) to identify appropriate opportunities presented through co-locations (inward and outward) to make the most cost effective use of public estate and enhance service to customers; (g) to significantly reduce the unit costs per Full Time Employee and per m2 of running the estate by taking advantage of commercial opportunities and increasing space utilisation through improved working environments; and (h) by working closely with the Customer and the Integrator, ensure customer

	service, performance and people engagement are protected, wherever possible.
Clause 2.1.1.4	<p>2.1.1.4 The principal operational objectives the Customer requires the Supplier to achieve is through the delivery of the Contract Services from the Operational Services Commencement Date until the expiry of the Term are to ensure that:</p> <ul style="list-style-type: none"> (a) the Customer's Employees have easy access to a seamless, integrated estates management service; (b) the Customer's Estate and their Supply Chain operate safely, efficiently and effectively; (c) all contractual obligations and requirements of the Supplier are fully met and: <ul style="list-style-type: none"> (i) achieve the required levels of service quality; (ii) improve performance continuously over time; and (iii) deliver the Contract Services at, or below, agreed costs; (iv) at the end of the Term or on earlier termination, a seamless transition of the Contract Services and in particular the transfer/passing of all data, to the Customer or its nominated replacement Supplier of the Contract Services.
Clause 2.1.1.5	<p>2.1.1.5 To ensure the Customer's objectives are met, the Customer requires and the Supplier agrees to provide the following outputs:</p> <ul style="list-style-type: none"> (a) ICT systems capable of integrating and/or interfacing with other related systems including but not limited to those of the Customer and the Customer's Supply Chain Member(s); (b) ICT systems capable of managing Work Orders associated with the Customer's Estate and providing reporting of the progress of completion of services required from such Works Orders and generating management reports; (c) ICT systems capable of recording data as to the extent and condition of the Customer's Estate; (d) ICT systems capable of input into ePIMs; (e) robust, efficient and effective management of the Customer's Estate on behalf of the Customer by the delivery of the Contract Services in accordance with the Supplier's contractual obligations; (f) robust management in order to enable the delivery of the Customer's transformational objectives; (g) deliver value for money throughout the Term; (h) flexibility of resource deployment, including the prompt identification and replacement of under-performing aspects of the Supply Chain in accordance with available contract mechanisms; (i) management to enable the delivery of the "the DWP 2020 Vision", (including but not limited to extended operating hours, digital transformation and SMART Working);

	<ul style="list-style-type: none"> (j) enabling of a potential future state in which the Government Property Unit (GPU) or other Government entities may provide some or all integration type services across the entire Government estate; (k) compliance within the Customer's Estate and with all statutory, regulatory and any relevant policies, processes and standards; (l) the Contract Service shall be available 24 hours per day, every day of the year, to accommodate the Customer's core business hours (to be confirmed by the Customer during the Implementation Phase), but likely to be 0700 until 2030 Monday to Friday and 0830 to 1700 Saturday. (m) evaluation and management of the Customer's exposure to risk; and (n) royalty free use by the Customer of all systems, design, processes and ways of working, procedures and service models created and undertaken by the Supplier in performing the Contract Services.
Insert New Clause 2.1.2.5	<p>2.1.2.5 The Supplier shall:</p> <ul style="list-style-type: none"> (a) perform its obligations under this Contract, including in relation to the supply of the Contract Services and any Goods in accordance with: <ul style="list-style-type: none"> (i) all applicable Law; (ii) Good Industry Practice; (iii) the Values and Behaviours in Schedule 15; (iv) the Baseline Security Requirements; (v) the Customer's Policies; and (vi) the Supplier's: <ul style="list-style-type: none"> (a) Implementation Plan; and (b) own established procedures and practices, <p>in each case to the extent the same do not conflict with the requirements of Clauses 2.1.1 to 2.1.1.4; and</p> <ul style="list-style-type: none"> (a) deliver the Contract Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money. (b) In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 2.1.1.1 to 2.1.1.4, the Supplier shall immediately notify the Customer Representative in writing of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with. The Supplier shall comply with such instructions at no cost to the Authority.
Insert New Clause 2.1.2.6	<p>2.1.2.6 Implementation</p> <ul style="list-style-type: none"> (a) The Parties shall comply with the provisions of Schedule 6. (Implementation Plan) in relation to the updating of the Implementation Plan.

	<p>(b) The Implementation Plan sets out the Supplier's strategy and timescales for providing the Implementation Services, the Milestones against which the Supplier's progress is measured and against which Milestone Payments under Annex 2 (Contract Charges) will be made.</p> <p>(c) The Supplier shall:</p> <p>(i) comply with the Implementation Plan; and</p> <p>(ii) ensure that each Milestone is achieved on or before its Milestone Date.</p>
Insert New Clause 2.1.12	<p>2.1.12 Human Resources</p> <p>(a) The Supplier shall provide all personnel required to deliver the Contract Services at all times and shall warrant all Supplier Staff are suitably competent and experienced to deliver the Contract Services. At all times the Customer has the right to determine suitability and have the right to instruct the Supplier to remove any Supplier Staff in accordance with the Contract.</p> <p>(b) The Supplier shall ensure, prior to commencing any work for the Customer, all personnel are subject to as a minimum HMG Baseline Personnel Security Standard security clearance. For certain Affected Properties to be advised by the Customer, further levels of personnel assessment may be required. This will typically require individuals to hold Security Check (SC) clearance in line with the latest HMG personnel security controls (https://www.gov.uk/government/publications/hmg-personnel-security-controls). There may be certain roles that require interaction with vulnerable groups, access higher levels of sensitive information, or due to the systems access capability, (for example database administrators, etc.), may be required to be subject to higher levels of personnel security vetting. The Customer shall advise on these roles during the Implementation Phase. All security clearance documents shall be made available at all times to the Customer.</p> <p>(c) The Supplier shall deploy personnel and other resources flexibly in order to ensure the Customer benefits from the scope and scale of the Supplier's organisation.</p> <p>(d) Full details of the contractual obligations required to comply with the above procedures can be found in the Guidance document "HMG Baseline Personnel Security Standard - A Guide for DWP Contractors". A PDF version can be viewed at: http://www.dwp.gov.uk/docs/aguidfordwpcontractors.pdf</p>
Insert New Clause 2.1.13	<p>2.1.13. The Supplier shall comply with the provisions of Schedule 1 (Service Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.</p>
Insert New Clause 2.4	<p>2.4. Independence</p> <p>2.4.1 The Supplier shall carry out (and shall procure that Supplier's Staff shall carry out) the Contract Services in the Customer's best interests and independently and impartially as between the:</p> <p>2.4.1.1 Supplier (and any Supplier Staff or any Supplier Related Party); and</p>

	<p>2.4.1.1 Customer Supply Chain Members,</p> <p>such that the Customer receives the same degree of impartiality and independence of judgment from the Supplier and any Supplier Staff in matters pertaining to the Estate as the Customer would were it performing the same role as the Supplier.</p> <p>2.4.3 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Staff or any Supplier Related Party is placed in a position of potential or actual conflict between the financial, commercial or other interests of the Supplier and/or any Supplier Related Party and the Supplier's duties to the Customer under this Contract. Should any conflict arise or become apparent, the Supplier will disclose the same to the Customer immediately with full details.</p> <p>2.4.4 Without prejudice to the Supplier's general obligation under Clauses 2.4.1 and 2.4.3, the Supplier shall not and shall procure that any Supplier Staff or any Supplier Related Party shall not engage in Proscribed Conduct and notwithstanding clause 2.1.2.2, shall notify the Customer immediately on any breach of this requirement.</p> <p>2.4.5 Without prejudice to the Customer's rights under Clause 8 (Termination) and clause (insert any new clauses) where the Supplier is in breach of Clause 2.4.1 to Clause 2.4.4 the Supplier shall within 5 (five) Working Days of any breach becoming apparent to it, provide proposals to the Customer for remedying and/or mitigating such breach. Upon any breach of Clauses 2.4.1 to 2.4.4 becoming apparent to the Customer (whether or not notified by the Supplier), the Customer may at the Supplier's cost:</p> <p>2.4.5.1 in accordance with Clause 26.4 (Service Exclusion) remove any or all of the Contract Services from the scope of this Contract and carry out such Contract Services itself and/or employ a third party to carry out such Contract Services; and/or</p> <p>2.4.5.2 require the Supplier to put such measures in place (including but not limited to information barriers) as required by the Customer in its absolute discretion to rectify and/or mitigate the effect of any breach of Clause 2.4.1 and/or Clause 2.4.4; and/or</p> <p>2.4.5.3 undertake additional monitoring activities pursuant to Clause 26.3 (Increased Monitoring) to ensure that notwithstanding any breach of Clauses 2.4.1 to Clause 2.4.4, the Supplier continues to comply with its other obligations pursuant to this Contract and in accordance with Clause 5.18.</p> <p>2.4.6 Save in the event of removal of the relevant element of the Contract Services pursuant to Clause 26.4 (Service Exclusion) or termination of all of part of the Contract Services, where as a result of the matter(s) leading or contributing to a breach of Clauses –2.4.1 to Clause 2.4.4 the Supplier or any Supplier Staff or a Supplier Related Party realises a profit or other financial benefit:</p> <p>2.4.6.1 the Supplier shall account to the Customer in respect of the same on a monthly basis; and</p> <p>2.4.6.2 the Customer shall be entitled to set off an amount equivalent to that financial benefit (as accounted for by the Supplier or otherwise as the Customer may determine) from any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Customer .</p>
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<p>Insert New Clause 2.5</p>	<p>Performance Failures</p> <p>2.5 If in any Service Period:</p> <p>2.5.1 a KPI Failure occurs, Service Credits shall be deducted from the Contract Charges in accordance with Paragraph 7 of Annex 2 (Contract);</p> <p>2.5.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 2.5.1);</p> <p>2.5.3 a SPI Failure occurs, the Supplier shall notify the Customer of the action (if any) it will take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring; and/or</p> <p>2.5.4 a Material SPI Failure occurs:</p> <p>2.5.4.1 the Supplier shall comply with the Rectification Plan Process; and</p> <p>2.5.4.2 the Customer may withhold a proportionate amount of the Contract Charges in accordance with the process set out in Clause 3.4 until the relevant Material SPI Failure is rectified to the reasonable satisfaction of the Customer, at which point the Customer shall pay the amount withheld.</p> <p>2.5.5 Service Credits shall be the Customer's exclusive financial remedy for a KPI Failure except where:</p> <p>2.5.5.1 the Supplier has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap;</p> <p>2.5.5.2 the KPI Failure:</p> <p>2.5.5.2.1 breaches the relevant KPI Service Threshold;</p> <p>2.5.5.2.2 has arisen due to the wilful default by the Supplier or any Supplier Personnel; or</p> <p>2.5.5.2.3 results in:</p> <p>(a) the corruption or loss of any Customer Data (in which case the remedies under Clause 32.4. (Customer Data) and Schedule 5 (Security Management Plan) shall also be available); and/or</p> <p>(b) the Customer being required to make a compensation payment to one or more third parties;</p> <p>(c) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or</p> <p>(d) the Customer is otherwise entitled to or does terminate the relevant Contract Services or this Contract pursuant to Clause 8 (Termination by the Authority).</p>
<p>Insert New Clause 2.7</p>	<p>2.7 Services Improvement</p> <p>2.7.1 In addition to meeting the requirements of Annex 1 Contract Services) the Supplier shall have an on-going obligation throughout the Term to identify:</p>

	<p>2.7.1.1 Savings pursuant to Schedule 13 (Gain Share); and</p> <p>2.7.1.2 new or potential improvements to the Contract Services and the Customer Supply Chain Services in accordance with this Clause 2.7.</p> <p>2.7.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.</p> <p>2.7.3 If the Customer wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Variation request in accordance with clause 28.</p>
Insert New Clause 2.8	<p>Unacceptable KPI Failure</p> <p>2.8.1 If in any Service Period an Unacceptable KPI Failure occurs:</p> <p>2.8.1.1 the Customer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being Compensation for Unacceptable KPI Failure); and</p> <p>2.8.1.2 if the Customer withholds and retains such Compensation for Unacceptable KPI Failure, any Service Failure Points (accruing from a KPI Failure only) and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,</p> <p>provided that the operation of this Clause 2.8 shall be without prejudice to any right which the Customer may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.</p> <p>2.8.2 The Supplier:</p> <p>2.8.2.1 agrees that the application of Clauses 2.8 is commercially justifiable where an Unacceptable KPI Failure occurs; and</p> <p>2.8.2.2 acknowledges that it has taken legal advice on the application of Clause 2.8 and has had the opportunity to price for that risk when calculating the Service Charges.</p> <p>Critical Performance Failure</p> <p>2.8.3 If a Critical Performance Failure occurs, the Customer may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 8 (Termination).</p>
Insert New Clause 3.4	<p>3.4 Set-off and Withholding</p> <p>Subject to the provisions of Paragraph 4 of Annex 2 (Contract Charges) and Schedule 13 (Gain Share) the Customer may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Customer) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Customer.</p>
Insert at New Clauses 4.1.1.3 and 4.1.1.4	<p>4.1.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or</p>

	4.1.1.4 any liability to the extent it cannot be limited or excluded by Law.
Insert New Clause 4.1.8	<p>4.1.8 Subject to Clauses 4.1.1, 4.1.4 and 4.1.5, the Supplier's liability shall be limited as follows:</p> <p>4.1.8.1-4.1.8.3 Fully Meets DWP Requirements – Content REDACTED</p>
Insert New Clause 4.1.9	4.1.9 For the avoidance of doubt, the Supplier's liability for any loss, damage, cost or expense incurred by the Customer under or in connection with this Contract as a result of any act or omission of the Supplier that is not capped in accordance with Clause 4.1.8 shall be unlimited.
Insert New Clause 4.2.8	<p>4.2.8. Insurance</p> <p>The Supplier shall comply with the additional provisions of Schedule 8 (Insurance) in relation to the Supplier's insurance policies.</p>
Replace Clause 6.1.2.9.9	6.1.2.9.9 in accordance with the Customer's Offshoring Policy, ensure that it does not Process or otherwise transfer any Customer's Personal Data outside the United Kingdom without the prior written consent of the Customer which may be given on such terms as the Customer in its discretion thinks fit.
Insert new clauses 6.2.6.5 to 6.2.6.9	<p>6.2.6.5 the need for such disclosure arises out of or in connection with any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Contract;</p> <p>6.2.6.6 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;</p> <p>6.2.6.7 to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;</p> <p>6.2.6.8 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the audit rights, its step-in rights pursuant to Clause 26.7 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 26.5 (Remedial Adviser) and Exit Management rights; or</p> <p>6.2.6.9 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,</p>
Insert New Clause 6.10	<p>6.10 The Supplier:</p> <p>6.10.1 shall not use or exploit the Customer's Confidential Information in any way except for the purposes anticipated under this Contract; and</p> <p>6.10.11 shall immediately notify the Customer if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Customer Party's Confidential Information.</p>
Insert New Clause 7.2.4	7.2.4 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by

	this Contract or to the extent that the Supplier has otherwise disclosed to the Customer in writing prior to the date of this Contract;
Insert New Clause 7.2.5	7.2.5 it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
Insert new Clause 8.1.1.14	8.1.1.14 If the Contract has been substantially amended to the extent that a new procurement procedure is required,
Insert New Clause 8.2.8	8.2.8 the Supplier's level of performance constituting a Critical Performance Failure.
Insert New Clause 8.2.9	8.2.9 a Remedial Advisor Failure.
Insert New Clause 8.2.10	8.2.10 a Rectification Plan Failure.
Insert New Clause 8.2.11	8.2.11 in respect of any security requirements set out in Schedule 5 (Security Management Plan) or Schedule 16 (Security Management) and/or any requirements set out in Schedule 7 (Staff Transfer);
Insert New Clause 8.2.12	8.2.12 There is a Financial Distress Event
Insert New Clause 8.2.14	8.2.14 any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 7 (Staff Transfer);
Replace Clause 21.1	21.1 Subject to clause 22.2, a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 21.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
Insert New Clause 21.2	21.2 Paragraphs 2.1, 2.6 and 3.3 of Part A, Paragraphs 2.3 and 2.4 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 6 (Staff Transfer) confer benefits on persons named in such provisions other than the Parties and are intended to be enforceable by such parties by virtue of the Contracts (Rights of Third Parties) Act 1999.
Insert New Clause 26.2 and Delete Clause 26.1	<p>26.2. Rectification Plan Process</p> <p>26.2.1 Notwithstanding clause 26.1, in the event that:</p> <p>26.2.1.1 there is, or is reasonably likely to be, a Delay; or</p> <p>26.2.1.2 in any Service Period there has been:</p> <p>(a) a Material KPI Failure; and/or</p> <p>(b) a Material SPI Failure; and/or</p> <p>the Supplier commits a Material Breach that is capable of remedy (and for these purposes a Material Breach may be a single Material Breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied) which taken together constitute a Material Breach), (each a Notifiable Default), the Supplier shall notify the Customer of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Customer may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.</p>

	<p>Notification</p> <p>26.2.2 If:</p> <p>26.2.2.1 the Supplier notifies the Customer pursuant to Clause 26.2.2 that a Notifiable Default has occurred; or</p> <p>26.2.2.2 the Customer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),</p> <p>then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Customer serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.</p> <p>26.2.3 The Rectification Plan Process shall be as set out in Clauses 26.2.4 (Submission of the draft Rectification Plan) to 26.2.7 (Contract of the Rectification Plan).</p> <p>Submission of the draft Rectification Plan</p> <p>26.2.4 The Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 26.2.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.</p> <p>26.2.5 The draft Rectification Plan shall set out:</p> <p>26.2.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;</p> <p>26.2.5.2 the actual or anticipated effect of the Notifiable Default; and</p> <p>26.2.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).</p> <p>26.2.6 The Supplier shall promptly provide to the Customer any further documentation that the Customer reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with the terms of Clause 24 (Dispute Resolution).</p> <p>Agreement of the Rectification Plan</p> <p>26.2.7 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:</p> <p>26.2.7.1 is insufficiently detailed to be capable of proper evaluation;</p> <p>26.2.7.2 will take too long to complete;</p> <p>26.2.7.3 will not prevent reoccurrence of the Notifiable Default; and/or</p>
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	<p>26.2.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Customer.</p> <p>26.2.8 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.</p> <p>26.2.9 If the Customer consents to the Rectification Plan:</p> <p>26.2.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and</p> <p>26.2.9.2 the Customer may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Event.</p>
New Clause 26.3	<p>26.3 Increased Monitoring</p> <p>26.3.1 At any time the Customer may by notice to the Supplier increase the level of its monitoring of the Supplier, and/or (at the Customer's option), of the Supplier's monitoring of its own performance of its obligations under this Contract in respect of the Contract Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Customer that it will perform (and is capable of performing) its obligations under this Contract.</p> <p>26.3.2 For the purposes of Clause 26.3.1, the Customer acknowledges that if the Supplier has otherwise failed to have demonstrated to the reasonable satisfaction of the Customer as required by Clause 26.3.1 but:</p> <p>26.3.2.1 if the Supplier has removed the person or persons responsible for the fraudulent reporting; or</p> <p>26.3.2.2 if in the following three (3) month period following the Customer notice (if it has not already been established) there have been no further erroneous reports of any kind,</p> <p>this shall be regarded as sufficient demonstration that the Supplier will perform and is capable of performing its obligations.</p> <p>26.3.3 If the Customer issues a notice under Clause 26.3.1 as a result of any failure by the Supplier to perform the Services in accordance with this Contract, the Supplier shall bear its own costs and indemnify and keep the Customer indemnified at all times from and against all reasonable costs and expenses (including internal management costs and professional fees) incurred by or on behalf of the Customer in relation to such increased level of monitoring arising due to circumstances under Clause 26.3.1.</p> <p>26.3.4 If the Customer issues a notice under Clause 26.3.1 other than as a result of any failure by the Supplier to perform the Services in accordance with this Contract, the Customer shall bear its own costs and indemnify and keep the Supplier indemnified at all times from and against all reasonable costs and expenses incurred by the Supplier in relation to such increased level of monitoring arising due to circumstances under Clause 26.3.1 provided always that the Supplier shall notify the Customer of any such reasonable costs and expenses prior to incurring those costs and/or</p>

	expenses.
Insert New Clause 26.4	<p>26.4. Service Exclusion</p> <p>26.4 Where:</p> <p>26.4.1 the Supplier has not achieved a Milestone within thirty (30) days of the relevant Milestone Date;</p> <p>26.4.2 a breach of Clauses 2.4.1 to 2.4.4 (inclusive) (Independence, Conflicts of Interest and Proscribed Conduct) has occurred or the Customer reasonably believes that a breach of Clause 2.4.1 to 2.4.4 (inclusive) (Independence) has or is likely to occur; and/or</p> <p>26.4.3 there is a material breach of part of the Contract Services,</p> <p>(each a Service Exclusion Cause) the Customer may give notice to the Supplier (a Service Exclusion Notice) giving reasonable details of the Service Exclusion Cause.</p> <p>26.4.4 The Service Exclusion Notice shall set out the following:</p> <p>26.4.4.1 the relevant Service Exclusion Cause that has occurred (or in the case of Clause 26.4.2 is likely to occur);</p> <p>26.4.4.2 the date on which the Customer wishes to commence provision of the relevant part or parts of the Service whether by itself or through a third party;</p> <p>26.4.4.3 whether the Customer or any third party appointed by the Customer will require access to the Supplier's premises and/or any premises owned by the Customer; and</p> <p>26.4.4.4 to the extent practicable, the impact that the Customer anticipates the action set out in the Service Exclusion Notice will have on the Supplier's obligations to provide the remaining Services.</p> <p>26.4.5 Following service of a Service Exclusion Notice:</p> <p>26.4.5.1 the Customer shall and/or shall procure that a third party shall take the action set out in the Service Exclusion Notice and any consequential additional action as it reasonably believes is necessary to ensure that the Services (or relevant part thereof) are delivered to the standard required pursuant to the terms of this Contract and so that the Customer is not in breach of any Law and/or its statutory duties;</p> <p>26.4.5.2 the Supplier shall co-operate fully (and/or procure that any Customer Supply Chain Member co-operates fully) with the Customer and/or any third party appointed by the Customer in order to enable the Customer and/or any third party appointed by the Customer to provide the Services identified in the Service Exclusion Notice so as to ensure that such Services are provided to: the standard required pursuant to the terms of this Contract and so that the Customer is not in breach of any Law and/or its statutory duties;</p> <p>26.4.5.3 without double counting with Clause 26.4.4 the Supplier shall be responsible for the Customer's reasonable and properly incurred costs and expenses (including any internal management time</p>

	<p>and/or procurement costs associated with appointing a third party) relating to the exercise of the Customer's rights under this Clause 26.4 (Service Exclusion); and</p> <p>26.4.5.4 the Contract Charges shall be adjusted to reflect the removal of the relevant parts of the Contract Services identified in the Service Exclusion Notice.</p>
Insert at Clause 26.5	<p>26.5. Remedial Adviser</p> <p>26.5 If:</p> <p>26.5.1 any of the Intervention Trigger Events occur; or</p> <p>26.5.2 the Customer reasonably believes that any of the Intervention Trigger Events are likely to occur,</p> <p>(each an Intervention Cause), the Customer may give notice to the Supplier (an Intervention Notice) giving reasonable details of the Intervention Cause and requiring:</p> <p>(a) a meeting between the Customer Representative and the Supplier Representative to discuss the Intervention Cause; and/or</p> <p>(b) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 26.5.</p> <p>26.5.3 For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Customer has no obligation to exercise its rights under this Clause 26.5 prior to or instead of exercising its right to terminate this Contract.</p> <p>26.5.4 If the Customer gives notice that it requires the appointment of a Remedial Adviser:</p> <p>26.5.4.1 the Remedial Adviser shall be:</p> <p>(a) a person selected by the Supplier and Approved by the Customer; or</p> <p>(b) if none of the persons selected by the Supplier have been Approved by the Customer (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Customer;</p> <p>26.5.4.2 the terms of engagement and start date agreed with the Remedial Adviser must be Approved by the Customer; and</p> <p>26.5.4.3 any right of the Customer to terminate this Contract pursuant to Clause 8 (Termination by the Customer) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the Intervention Period).</p> <p>26.5.5 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's</p>

	responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
26.5.5.1	observe the conduct of and work alongside the Supplier Staff to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
26.5.5.2	gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
26.5.5.3	write reports and provide information to the Customer in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
26.5.5.4	make recommendations to the Customer and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
26.5.5.5	take any other steps that the Customer and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
26.5.6	The Supplier shall:
26.5.6.1	work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
26.5.6.2	ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
26.5.6.3	submit to such monitoring as the Customer and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
26.9.5.6	implement any reasonable recommendations made by the Remedial Adviser that have been Approved by the Customer within the timescales given by the Remedial Adviser; and
26.9.5.6	not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Customer (such consent not to be unreasonably withheld).
26.5.7	The Supplier shall be responsible for:
26.5.7.1	the costs of appointing, and the fees charged by, the Remedial Adviser; and
26.5.7.2	its own costs in connection with any action required by the Customer and/or the Remedial Adviser pursuant to this Clause 26.5.
26.5.8	If:
26.5.8.1	the Supplier:
(a)	fails to perform any of the steps required by the Customer in an Intervention Notice; and/or
(b)	is in Default of any of its obligations under Clause 26.5.6; and/or

	<p>26.5.8.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,</p> <p>(each a Remedial Adviser Failure), the Customer shall be entitled to terminate this Contract pursuant to Clause 8 (Termination).</p>
Insert New Clause 26.7	<p>26.7. Step-in Rights</p> <p>26.7.1 On the occurrence of a Step-In Trigger Event, the Customer may serve notice on the Supplier (a Step-In Notice) that it will be taking action under this Clause 26.7 (Step-in Rights), either itself or with the assistance of a third party. The Step-In Notice shall set out the following:</p> <ul style="list-style-type: none"> (a) the action the Customer wishes to take and in particular the Contract Services that it wishes to control (the Required Action); (b) the Step-In Trigger Event that has occurred and whether the Customer believes that the Required Action is due to the Supplier's Default; (c) the date on which it wishes to commence the Required Action; (d) the time period which it believes will be necessary for the Required Action; (e) whether the Customer will require access to the Supplier's premises and/or the Sites; and (f) to the extent practicable, the impact that the Customer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken. <p>26.7.2 Following service of a Step-In Notice, the Customer shall:</p> <ul style="list-style-type: none"> (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action; (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier; (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Customer is not assuming control; and (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Customer's rights under this Clause 26.7. <p>26.7.3 For so long as and to the extent that the Required Action is continuing, then:</p> <ul style="list-style-type: none"> (a) the Supplier shall not be obliged to provide the Contract Services to the extent that they are the subject of the Required Action; (b) no Deductions shall be applicable in relation to Charges in respect of Contract Services that are the subject of the Required Action and the provisions of Clause 26.7.4 shall apply to Deductions from Charges in respect of other Contract Services; and (c) the Customer shall pay to the Supplier the Contract Charges after subtracting any applicable Deductions and the Customer's costs of taking

	<p>the Required Action.</p> <p>26.7.3 If the Supplier demonstrates to the reasonable satisfaction of the Customer that the Required Action has resulted in:</p> <p>(a) the degradation of any Contract Services not subject to the Required Action; or</p> <p>(b) the non-Achievement of a Milestone,</p> <p>beyond that which would have been the case had the Customer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Contract Charges.</p> <p>26.7.4 Before ceasing to exercise its step in rights under this Clause 26.7 the Customer shall deliver a written notice to the Supplier (a Step-Out Notice), specifying:</p> <p>(a) the Required Action it has actually taken; and</p> <p>(b) the date on which the Customer plans to end the Required Action (the Step-Out Date) subject to the Customer being satisfied with the Supplier's ability to resume the provision of the Contract Services and the Supplier's plan developed in accordance with Clause 32.6.</p> <p>26.7.5 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for Approval a draft plan (a Step-Out Plan) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.</p> <p>26.7.6 If the Customer does not Approve the draft Step-Out Plan, the Customer shall inform the Supplier of its reasons for not Approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Customer for the Approval. The Customer shall not withhold or delay Approval of the draft Step-Out Plan unnecessarily.</p> <p>26.7.7 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 26.7, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:</p> <p>(a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or</p> <p>(b) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Customer serving the Step-In Notice is identified as not being the result of the Supplier's Default).</p>
Insert New Clause 26.8	<p>26.8 Where the Customer :</p> <p>26.8.1 exercises its rights; or</p> <p>26.8.2 requires the Supplier to act,</p> <p>pursuant to Clause 26.2. (Rectification Plan Process), Clause 26.3 (Increased Monitoring), Clause 26.4 (Service Exclusion) Clause 26.5(Remedial Adviser), and, save where there is no failure or breach by the Supplier, Clause 26.7 (Step-In Rights) the Supplier shall indemnify and keep indemnified the Customer for all expenses (including professional fees), costs, damages and losses incurred by it</p>

	<p>thereunder.</p> <p>26.8.2 In the event that the Supplier:</p> <p>26.8.2.1 fails to comply with Clause 26.1 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or</p> <p>26.8.2.2 persistently fails to comply with Clause 26.1,</p> <p>the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.</p>
Insert change to Clause 32	In clause 32 (Personal Data outside of the EEA) references to European Economic Area shall be replaced by United Kingdom
Replace clause 32.4.6	<p>32.4.6.1 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Plan. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than three (3) monthly intervals (or such other intervals as may be agreed in writing between the Parties).</p> <p>32.4.2 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that:</p> <p>32.4.2.1 complies with the Baseline Security Requirements;</p> <p>32.4.2.2 complies with the DWP Information Security Policy;</p> <p>32.4.2.3 is capable of implementing and enforcing appropriate security standards as specified by The Customer from time to time including but not limited to the result of any information risk assessment undertaken pursuant to the DWP Enterprise Security Risk Management Strategy;</p> <p>32.4.2.4 as part of the HMG Security Policy Framework, complies with and shall have certificated the HMG Cyber Essentials Scheme or approved equivalent as defined under the HMG Cyber Essentials Scheme (further details available at: www.cyber-essentials-scheme.co.uk);</p> <p>32.4.2.5 complies with all relevant aspects of the Government Digital Service Open Standards;</p>
Insert New Clause 33	<p>33. EMPLOYMENT INDEMNITIES</p> <p>33.1 The Employment Indemnity</p> <p>33.1.1 The Parties agree that:</p> <p>33.1.1.1 the Supplier shall both during term of the Contract and following its expiry indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Related Party; and</p> <p>33.1.1.2 the Customer shall both during term of the Contract and following its expiry indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Customer or any of the Customer's employees, agents, consultants and contractors.</p> <p>33.2 Income Tax and National Insurance Contributions</p> <p>33.2.1 Where the Supplier or any Supplier Related Party are liable to be taxed in the UK or to pay national insurance contributions in respect of</p>

	<p>consideration received under this Contract, the Supplier shall:</p> <p>33.2.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and</p> <p>33.2.1.2 indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Contract Services by the Supplier or any Supplier Related Party.</p> <p>33.3 Staff Transfer</p> <p>33.3.1 The Parties agree that:</p> <p>33.3.1.1 where the commencement of the provision of the Contract Services or any part of the Contract Services results in one or more Relevant Transfers, Schedule 7 (Staff Transfer) shall apply as follows:</p> <p>(a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Schedule 7 (Staff Transfer) shall apply;</p> <p>(b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 7 (Staff Transfer) shall apply;</p> <p>(c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 7 (Staff Transfer) shall apply; and</p> <p>(d) Part C of Schedule 7 (Staff Transfer) shall not apply;</p> <p>33.3.2 where commencement of the provision of the Contract Services or a part of the Contract Services does not result in a Relevant Transfer of Transferring Customer Employees:</p> <p>33.3.2.1 Part C of Schedule 7 (Staff Transfer) shall apply; and</p> <p>33.3.2.2 Parts A of Schedule 6 (Staff Transfer) shall not apply; and</p> <p>Part D of Schedule 7 (Staff Transfer) shall apply on the expiry or termination of the Contract or any part of the Contract Services.</p>
Insert New Clause 34	<p>34. FINANCIAL DISTRESS</p> <p>The Parties shall comply with the provisions of Schedule 15 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing</p>
Insert New Clause 35	<p>35. GOVERNANCE</p> <p>35.1 The Parties shall comply with the provisions of Schedule 12 (Governance) in relation to the management and governance of this Contract.</p>
Insert New Clause 36	<p>36. FAILURE TO ACHIEVE MILESTONES</p> <p>If:</p> <p>36.1.1 a Milestone is not achieved by the relevant Milestone Date; and/or</p>

	<p>36.1.2 the Operational Services are not commenced by the Operational Services Commencement Date</p> <p>then the Customer shall be entitled to:</p> <p>36.1.3 set off any Losses incurred by the Customer against any payments otherwise due during the Implementation Phase;</p> <p>36.1.4 exercise its rights pursuant to Clause 26.3 (Increased Monitoring);</p> <p>36.1.5 exercise its rights pursuant to Clause 26.5 (Remedial Adviser);</p> <p>36.1.6 exercise its rights pursuant to Clause 26.7 (Step-In Rights);</p> <p>36.1.7 claim any Losses incurred by the Customer from the Supplier; and/or</p> <p>36.1.8 require the Supplier to apply such additional resources as are necessary to remedy the delay.</p> <p>36.2 Notwithstanding any other provision in this Contract, the Supplier shall not implement any of the Operational Services unless the same has been Approved by the Customer.</p>
Insert New Clause 37	<p>37. BREXIT</p> <p>37.1 The Parties agree that on the date when the United Kingdom leaves the European Union as a consequence of a notice under Article 50 of the Treaty of the European Union, this Agreement shall be amended as follows:</p> <p>37.1.1 in Schedule 7 (Staff Transfer):</p> <p>(a) delete the definition of Acquired Rights Directive;</p> <p>(b) in the definition of Employment Regulations delete the words “or any other Regulations implementing the Acquired Rights Directive”; and</p> <p>(c) delete the words “and/or the Acquired Rights Directive” in Part A paragraphs. 2.1.6; 2.3; Part C paragraph 1.2; and Part D paragraphs 2.1; 2.3.6; and 2.5.</p>
Insert New Clause 38	<p>38.1 EQUALITY</p> <p>The Supplier shall:</p> <p>38.1.1 perform its obligations under this Contract (including those in relation to the Contract Services) in accordance with:</p> <p>(a) all applicable equality Law;</p> <p>(b) the Customer's Policies;</p> <p>(c) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law; and</p> <p>(d) the provisions of Schedule 9.3 (Equality).</p> <p>38.1.2 take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal,</p>

	<p>or the Equality and Human Rights Commission or (any successor organisation).</p> <p>38.1.3 not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.</p>
Insert New Clause 39	<p>39. SUSTAINABILITY</p> <p>39.1 The Customer aims to maximise the contribution to sustainable and wider Government procurement objectives (See Schedule 9 Part 1 (Sustainable Development Requirements), by:</p> <ul style="list-style-type: none"> (a) April 2020, reducing greenhouse gas emissions by at least 47% from a 2009/10 baseline, (b) reducing the amount of waste going to landfill to less than 10%, Reduce overall waste generated and increase percentage recycled, (c) reducing water consumption, improving on the reductions they had made by 2014/15, (d) buy more sustainable and efficient products and services with the aim of achieving the best long-term, overall value for money for society, and; (e) reporting publicly in an open and transparent manner on the steps they are taking to address climate change adaptation, biodiversity and the natural environment, procurement of food and catering services, sustainable construction; and any other material factors reducing environmental impacts. <p>39.2 The Supplier shall comply with the requirements of Schedule 9 Part 1 including but not limited to providing a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with Paragraphs 2.2 and 2.3.</p>
Insert New Clause 39	<p>39. Promoting Tax Compliance</p> <p>39.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:</p> <ul style="list-style-type: none"> 39.1.1 notify the Customer in writing of such fact within 5 Working Days of its occurrence; and 39.1.2 promptly provide to the Customer: <ul style="list-style-type: none"> (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
Insert New Clause 40	<p>40. EXIT STRATEGY</p> <p>40.1 The Supplier shall comply with Schedule 10 (Supplier Exit). The Supplier shall produce an outline exit solution within 4 months of Contract</p>

	Commencement Date which explains the key activities and associated timescales which it will undertake towards the expiry of this Contract in accordance with Schedule 10.
Insert New Clause 41	FINANCIAL DISTRESS EVENT The Supplier shall comply with the terms of Schedule 14 (Financial Distress)
Insert New Paragraph 2.2.7 of Schedule 5	and shall be compliant with Schedule 16 (Security Plan) including the Baseline Security Requirements.
Insert New Schedule 6	Implementation Services
Insert New Schedule 7	Staff Transfer
Insert New Schedule 8	Insurance
Insert New Schedule 9	Customer Policies
Insert New Schedule 10	Supplier Exit
Insert New Schedule 11	Asset (Development Gain) Management
Insert New Schedule 12	Governance
Insert New Schedule 13	Gain Share
Insert New Schedule 14	Financial Distress
Insert New Schedule 15	Values and Behaviours
Insert New Schedule 16	Security Management

SCHEDULE 6 - IMPLEMENTATION SERVICES

1 Implementation Plan

1.1 The Implementation Plan set out in Appendix 1 sets out the Supplier's strategy and timescales for providing the Implementation Services, the Milestones against which the Supplier's progress is measured and against which Milestone Payments under Annex 2 (Contract Charges) will be made.

1.2 The Supplier shall:

- (a) comply with the Implementation Plan; and
- (b) ensure that each Milestone is achieved on or before its Milestone Date.

1.3 Updates To And Maintenance Of The Implementation Plan

- (a) Following the Contract Commencement Date, if requested by the Customer, the Supplier shall submit a revised Implementation Plan to the Customer for approval pursuant to Paragraph 1.4.
- (b) Without prejudice to Paragraph 1.3.1, the Customer shall be entitled to request a revised Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Implementation Plan to the Customer within five (5) Working Days of receiving such a request from the Customer (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 in Clause 24 of the Call-off Terms).
- (c) Any revised Implementation Plan shall (subject to Paragraph 1.3.5) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 1.4.
- (d) Save for any amendments which are of a type identified and notified by the Customer (at the Customer's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Implementation Plan shall be subject to a Variation provided that:
 - (a) any amendments to elements of the Implementation Plan as agreed between the Parties on the date of this Contract 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 28 of the Call-Off Terms (Variation).
 - (c) Any proposed amendments to the Implementation Plan shall not come into force until they have been approved in writing by the Customer.
 - (d) The Supplier shall not be able to claim its costs and expenses arising from or attributable to the revision of the Implementation Plan hereunder.

1.4 Approval Of Updates To The Implementation Plan

- (a) The Customer shall specify the format for submission of updates to the Implementation Plan. The Supplier shall thereafter ensure that the revised Implementation Plan is produced in the required format which shall be either:
 - (a) PDF format;
 - (b) Microsoft Project; or

- (c) Microsoft Excel.
- (b) Prior to the submission of any revisions to the Implementation Plan to the Customer in accordance with this paragraph 1.4, the Customer shall have the right:
 - (a) to review any documentation produced by the Supplier in relation to the development of the Implementation Plan, including:
 - (i) details of the Supplier's intended approach to the revisions to the Implementation Plan and its development;
 - (ii) copies of any drafts of the Implementation Plan produced by the Supplier; and
 - (iii) any other work in progress in relation to the Implementation Plan; and
 - (b) to require the Supplier to include any reasonable changes or provisions in the Implementation Plan.
- (c) Following receipt of the draft revised Implementation Plan from the Supplier, the Customer shall:
 - (a) review and comment on the proposed revisions to the Implementation Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it:
 - (i) Approves; or
 - (ii) rejects,

the revisions to the Implementation Plan no later than ten (10) Working Days after the date on which the revised Implementation Plan is first delivered to the Customer.
- (d) If the Customer rejects the proposed update to the Implementation Plan:
 - (a) the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the Implementation Plan (taking reasonable account of the Customer's reasons for rejection) and shall re-submit a revised draft of the Implementation Plan to the Customer for the Customer's approval within five (5) Working Days of the date of the Customer's notice of rejection. The provisions of Paragraph 1.3 and this Paragraph 1.5 shall apply again to any resubmitted revised draft of the Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at Clause 24 of the Call-Off Terms at any time.
- (e) If the Customer approves the revised draft of the Implementation Plan, it shall replace the existing Implementation Plan from the date of the Customer's notice of approval.

2 COMPLETION OF MILESTONES

- 2.1 Subject to Paragraph 2.3 the Customer shall issue a certificate Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
 - (a) the Supplier demonstrating to the Customer's reasonable satisfaction that all Key Deliverables related to the relevant Milestone have met; and
 - (b) performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Milestone.

- 2.2 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 Annex 2 (Contract Charges) subject to any Milestone Deduction as determined in accordance with Annex 2..
- 2.3 If in the reasonable opinion of the Customer, the Supplier has not met a Milestone by the Milestone Date the Supplier shall promptly convene a meeting with the Customer to agree the degree of fault and corresponding consequences and steps in accordance with the following table:

Degree of Fault	Definition	Consequences and Resulting Steps
Critical	Material element or Key Deliverable not delivered or operational in the reasonable opinion of the Customer.	<p>Milestone Payment cannot be paid to the Supplier and Supplier cannot proceed to next phase until fault is rectified.</p> <p>The relevant Milestone Achievement Certificate shall not be issued.</p>
Major	Material but non-critical impact upon operation of the Supplier solution, Operational Services or Key Deliverable in the reasonable opinion of the Customer.	<p>Supplier may move to the next phase with the written agreement of the Customer provided the parties have agreed a plan and timescale for rectification.</p> <p>The relevant Milestone Achievement Certificate shall not be issued.</p> <p>The relevant Milestone Payment will not be paid to the Supplier until the fault is rectified and the relevant Milestone Achievement Certificate has been issued.</p>
Moderate	Supplier solution, Operational Services or Key Deliverable do not work as intended (in the reasonable opinion of the Customer) but the Supplier has proposed a work-around acceptable to the Customer.	<p>Supplier may move to the next phase with the written agreement of the Customer provided the parties have agreed a plan and timescale for remediation.</p> <p>Following completion of the plan for remediation in accordance with its terms the relevant Milestone Achievement Certificate to be issued and the relevant Milestone Payment shall be made to the Supplier.</p>

Degree of Fault	Definition	Consequences and Resulting Steps
Minor	Non-material impact on Supplier Solution, Operating Services or Key Deliverable in the opinion of the Customer.	<p>Supplier may move to the next phase with the written agreement of the Customer provided the parties have agreed a plan and timescale for remediation.</p> <p>Following completion of the plan for remediation in accordance with its terms the relevant Milestone Achievement Certificate to be issued and the relevant Milestone Payment shall be made to the Supplier.</p>

- 2.4 The Supplier shall undertake all necessary steps as identified in the table above including rectifying the relevant fault at no additional cost to the.
- 2.5 Where the Customer and the Supplier are unable to agree upon the degree of fault, the parties shall escalate the matter in accordance with the Dispute Resolution Procedure (Clause 24).
- 2.6 Where the Supplier fails to rectify a major fault (as defined in Paragraph 2.3) by the timescale set out in any remediation plan agreed with the Customer, the Customer shall be entitled to escalate the fault to a critical fault by providing written notice to the Supplier which shall take effect upon receipt of such notice by the Supplier.
- 2.7 Where the Supplier fails to rectify a moderate fault (as defined in Paragraph 2.3) by the agreed timescale for rectification, the Customer (in recognition that the Customer may have already released a payment to the Supplier notwithstanding the fault) shall be entitled to escalate the fault to a major fault by providing written notice to the Supplier which shall take effect upon receipt of such notice by the Supplier.

2.8 Project Board

The Supplier's performance against the Implementation Plan shall be monitored at meetings of the Project Board. In preparation for such meetings, the current Implementation Plan shall be provided by the Supplier to the Customer not less than five (5) Working Days in advance of each meeting of the Project Board.

2.9 Government Reviews

The Supplier acknowledges that the Contract 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 provide such reasonable assistance as may be required for this purpose.

Appendix 1

Implementation Plan

DOCUMENT REDACTED

SCHEDULE 7 - STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time
"Admission Agreement"	The agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time to time;
"Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
"Employment Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none">(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;(b) unfair, wrongful or constructive dismissal compensation;(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;(d) compensation for less favourable treatment of part-time workers or fixed term employees;(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;(f) employment claims whether in tort, contract or

	statute or otherwise;
	(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
"Employment Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"Fair Deal Employees"	those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
"Former Supplier"	a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Contract Services (or any part of the Contract Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub- contractor);
"Losses"	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013;
"Notified Sub-contractor"	a Sub-Contractor identified in the Annex to this Schedule to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"Replacement Sub-contractor"	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

"Replacement Services"	means any services which are the same as or substantially similar to any of the Contract Services and which the Customer receives in substitution for any of the Contract Services whether following the expiry or termination of the Contract or during its term, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Supplier"	means any third party service provider of Replacement Services appointed by the Customer from time to time (or where the Customer is providing replacement Services for its own account, the Customer);
"Schemes"	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
"Service Transfer"	any transfer of the Contract Services (or any part of the Contract Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
"Service Transfer Date"	the date of a Service Transfer;
"Staffing Information"	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the Data Protection Act 1998), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement and gender; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance,

			<p>pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</p> <p>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</p> <p>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</p> <p>(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</p> <p>(ii) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;</p>
"Supplier's Final Personnel List"	Supplier		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 Contract Services or any relevant part of the Contract Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
"Supplier Personnel"			all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under the Contract;
"Supplier's Provisional Personnel List"	Supplier		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 Contract 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;
"Supplier Related Party"			all directors, officers, employees, agents, consultants, contractors and any Affiliate of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Contract;
"Transferring Employees"	Customer		those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Employees"	Former Supplier		in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

"Transferring Employees" **Supplier** those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

"Working Day" means any day other than a Saturday or Sunday or public holiday in England and Wales

3 INTERPRETATION

3.1 Where a provision in this Schedule 7 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each Supplier Related Party shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

SCHEDULE 7 - PART A: TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF CONTRACT SERVICES

1 RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

- (a) the commencement of the provision of the Contract Services or of each relevant part of the Contract Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms dis-applied 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 Customer Employee.

1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer 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 Customer; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2 CUSTOMER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Customer shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Customer 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 Customer occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer 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:
 - (a) in relation to any Transferring Customer 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
 - (b) in relation to any employee who is not a Transferring Customer 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 Customer 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 Customer 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 Customer Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer 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 Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer 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 Supplier Related Party (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 Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or Supplier Related Party to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier or any Supplier Related Party to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer 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 Customer; and
- (b) the Customer 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 Customer 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 Customer, 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 Customer 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:
 - (a) any claim for:
 - (i) 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
 - (ii) 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 Supplier Related Party; or
 - (b) 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 Customer within 6 months of the Contract Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Customer 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 Customer against any Employee Liabilities in respect of any Transferring Customer 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 Supplier Related Party whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Supplier Related Party on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Supplier Related Party is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Supplier Related Party 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 Supplier Related Party made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Supplier Related Party (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 Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer 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:
 - (a) in relation to any Transferring Customer 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
 - (b) in relation to any employee who is not a Transferring Customer 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 Customer to the Supplier or a Supplier Related Party, 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;
 - (c) a failure of the Supplier or any Supplier Related Party 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 Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - (d) any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Supplier Related Party in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer'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 Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Supplier Related Party 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 Supplier Related Party shall perform and discharge, all its obligations in respect of the Transferring Customer 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 Customer and the Supplier.

4 INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer 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 Supplier Related Party shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer 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 Clause 28 of the Call-Off Terms (Variation).

6 PENSIONS

The Supplier shall, and shall procure that each Supplier Related Party shall, comply with the pensions provisions in the following Annex.

SCHEDULE 7 - ANNEX TO PART A: PENSIONS

1 PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer
- (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 Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement; and
 - (c) agree that notwithstanding sub-paragraph (b), the Supplier shall notify the Customer in the event that it breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer 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 Customer, 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 Customer 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 Customer 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

- 4.1 The Supplier and the Customer 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

- 5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer 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

- 6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7 SUBSEQUENT TRANSFERS

- 7.1 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 Customer 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
 - (a) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Contract Services; or
 - (b) after the date which is two (2) years prior to the date of expiry of this Contract, 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 Customer, 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 Customer (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.

SCHEDULE 7 - PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF CONTRACT SERVICES

1 RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

- (a) the commencement of the provision of the Contract Services or of any relevant part of the Contract 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 dis-applied 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.

2 INDEMNITIES

- 2.1 The Customer shall procure that the Former Supplier shall indemnify and keep indemnified the Supplier against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with any employment claim by a Transferring Former Supplier Employee in relation to the Transferring Former Supplier Employee's employment prior to the Relevant Transfer Date.
- 2.2 Where any Transferring Former Supplier Employee is due to be paid remuneration (such as salary, holiday pay, commission and all other payments made to the employee) after the Relevant Transfer Date in respect of the period before the Relevant Transfer Date, the same shall be paid by the Supplier. The Customer shall procure that the Supplier shall, within 30 days of making any demand and providing any supporting information or documentation which may reasonably be required by the Former Supplier, be indemnified by the Former Supplier, pro-rated in respect of the period before the Relevant Transfer Date.
- 2.3 Where any Transferring Former Supplier Employee is due to be paid remuneration (such as salary, holiday pay, commission and all other payments made to the employee) before the Relevant Transfer Date in respect of the period after the Relevant Transfer Date, the same shall be paid by the Former Supplier who may within 30 days of making any demand and providing any supporting information and documentation which may reasonably be required by the Customer, be reimbursed by the Customer. The Supplier shall indemnify the Former Supplier pro-rated in respect of the period after the Relevant Transfer Date and the Customer in respect to any such reimbursements it may make to the Former Supplier in accordance with this Paragraph.
- 2.4 Subject to Paragraphs 2.2 and 2.3, the Supplier shall indemnify and keep indemnified the Customer and the Former Supplier against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with any employment claim by a Transferring Former Supplier Employee in relation to the Transferring Former Supplier Employee's employment after the Relevant Transfer Date or arising before the Relevant Transfer Date as a result of the Customer or the Supplier proposing to employ the Transferring Former Supplier Employees on less favourable terms and conditions of employment or to take any other measure in relation to their employment.

3 INFORMATION

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

4 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 4.1 The Supplier shall, and shall procure that each Supplier Related Party shall, comply with any requirement notified to it by the Customer 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.
- 4.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 4.1 shall be agreed in accordance with Clause 28 of the Call-Off Terms (Variation)

5 PROCUREMENT OBLIGATIONS

- 5.1 Notwithstanding any other provisions of this Part B, where in this Part B the Customer 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 Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

6 PENSIONS

- 6.1 The Supplier shall, and shall procure that each Supplier Related Party 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.

SCHEDULE 7 - ANNEX TO PART B PENSIONS

1 PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
- (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 Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement; and
 - (c) agree that notwithstanding Paragraph (b) the supplier shall notify the Customer in the event that it breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer 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 re-joining 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 Customer, 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 Customer 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.
- 2.4 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 Customer 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

4.1 The Supplier and the Customer 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

5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer 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

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

7 SUBSEQUENT TRANSFERS

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

SCHEDULE 7- PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF CONTRACT SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Contract Services or of any part of the Contract Services will not be a Relevant Transfer in relation to any employees of the Customer.
- 1.2 If any employee of the Customer claims, or it is determined in relation to any employee of the Customer, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Supplier Related Party 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 Customer and, where required by the Customer, give notice to the Former Supplier; and
 - (b) the Customer 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 Customer (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 Customer), 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 Supplier Related Party 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 Supplier Related Party 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 Customer shall:
- (a) indemnify the Supplier and/or the relevant Supplier Related Party against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer 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
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Customer 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 Supplier Related Party pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with

the Supplier and/or the Supplier Related Party and the Supplier shall indemnify the Customer, and shall procure that the Supplier Related Party shall indemnify the Customer, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Supplier Related Party.

2.4 The indemnities in Paragraph 2.1:

- (a) shall not apply to:
- (a) any claim for:
 - (i) 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
 - (ii) 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 Supplier Related Party; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Supplier Related Party neglected to follow a fair dismissal procedure; and
- (c) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Supplier Related Party to the Customer and within 6 months of the Contract Commencement Date.

3 PROCUREMENT OBLIGATIONS

- 3.1 Where in this Part C the Customer 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 Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

SCHEDULE 7 - 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 Customer of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination of this Contract or any part of the Contract Services;
 - (c) the date which is 12 months before the date this Contract is due to expire; and
 - (d) receipt of a written request of the Customer at any time (provided that the Customer 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 Data Protection Act 1998, 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 Customer.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer 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 Customer 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 Customer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.3 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 Contract Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (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 Contract Services (or the relevant part of the Contract 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 Contract Services (or the relevant part of the Contract 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 Supplier Related Party shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Supplier Related Party 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 of this Contract, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Contract Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Contract Services;
- (b) the percentage of time spent by each employee engaged in providing the Contract 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 Supplier Related Party shall provide, all reasonable cooperation and assistance to the Customer, 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 Supplier Related Party shall provide, to the Customer or, at the direction of the Customer, 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 Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Contract Services, the identity of the provider of the Contract Services (or any part of the Contract Services) may change (whether as a result of termination of this Contract or any part of the Contract Services or otherwise) resulting in the Contract 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 Customer 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 dis-applied 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 Supplier Related Party 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 Supplier Related Party 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 Supplier Related Party (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Customer 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 Supplier Related Party whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Supplier Related Party occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Supplier Related Party 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 Supplier Related Party 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:
 - (a) 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
 - (b) 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 Customer 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 Supplier Related Party 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 Supplier Related Party other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract 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 Supplier Related Party 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 Customer 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 Supplier Related Party to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Customer 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 Supplier Related Party 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 Supplier Related Party, the Customer 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 Customer 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:
 - (a) any claim for:
 - (i) 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
 - (ii) 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
 - (b) 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 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 Supplier Related Party shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Supplier Related Party 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 Supplier Related Party shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Supplier Related Party in writing such information as is necessary to enable the Supplier and each Supplier Related Party to carry out their respective duties under regulation 13 of the Employment Regulations.

- 2.13 Subject to Paragraph 2.14, the Customer 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:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) 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:
 - (a) 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
 - (b) 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 Supplier Related Party (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 Supplier Related Party (as applicable) to comply with its obligations under the Employment Regulations.

SCHEDULE 7 - ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

NONE

SCHEDULE 8 - INSURANCE

1 OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Customer under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 to Schedule 8 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 Customer on the Contract Commencement Date (or inception of the relevant Insurances if later) and thereafter within ten (10) Working Days of written request from the Customer evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Customer. In the absence of a Financial Distress Event, the Customer 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 Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract Services and for which the Customer is legally liable.

2 GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Contract, the Customer shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Contract 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 Customer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Customer shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Customer.

4 EVIDENCE OF INSURANCES

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

5 AGGREGATE LIMIT OF INDEMNITY

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

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

7 INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Contract Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Customer receives a claim relating to or arising out of the Contract Services and/or this Contract, the Supplier shall co-operate with the Customer 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 Customer is the claimant party, the Supplier shall give the Customer notice within 20 Working Days after any insurance claim relating to or arising out of the provision of the Contract Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Customer) 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, then where any liability arises out of or in connection with any act, omission, breach or default by the Supplier or Supplier Personnel or any Supplier Related Party the Supplier shall be liable for such excess or deductible.
- 7.5 Notwithstanding any other provision in this Schedule 8, the Supplier shall not be entitled to recover from the Customer any sum paid or payable by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

SCHEDULE 8 ANNEX 1: REQUIRED INSURANCES

The Supplier is required to hold the following minimum levels of Insurance (in accordance with the Framework Agreement)

Public and Products Liability: £2m for each individual claim

Professional Indemnity: £2m for each individual claim

Employer's liability £5m: or such minimum level of indemnity as is required by law from time to time

SCHEDULE 9 - DEPARTMENT FOR WORK AND PENSIONS' POLICIES



Schedule 9
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SCHEDULE 10 - SUPPLIER EXIT

1 DEFINITIONS

In this Schedule the following definitions shall apply:

"Customer Data"	<p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:</p> <ul style="list-style-type: none">(a) Supplied to the Supplier by or on behalf of the Customer; and/or(b) Which the Supplier is required to generate, process, share or transmit pursuant to this Contract; or any Personal Data for which the Customer is the Data Controller;
"Emergency Exit"	<p>any termination of this Contract which is a:</p> <ul style="list-style-type: none">(c) termination of the whole or part of this Contract in accordance with Clause 8 of the Call –Off Terms (Termination);(d) termination of the provision of the Contract Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 8 of the Call-Off Terms (Termination); or(e) wrongful termination or repudiation of this Contract by either Party;
"Exclusive Assets"	<p>those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Contract Services;</p>
"Exit Information"	<p>has the meaning given in Paragraph 3.1;</p>
"Exit Manager"	<p>the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;</p>
"Net Book Value"	<p>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 Customer of the same date as this Contract;</p>
"Non-Exclusive Assets"	<p>those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Contract Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;</p>

"Ordinary Exit"	any termination of this Contract which occurs as a result of the expiry of the Initial Term or any Extended Term Date;
"Personal Data"	Means as defined in the Data Protection Act 1998
"Registers"	the register and configuration database referred to in Paragraphs 2.1.1 and 2.1.2;
"Transferrable Assets"	those of the Exclusive Assets which are capable of legal transfer to the Customer;
"Transferrable Contracts"	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other Contracts which are necessary to enable the Customer or any Replacement Supplier to perform the Contract Services or the Replacement Services, including in relation to licences all relevant Documentation; and
"Transferring Contracts"	has the meaning given in Paragraph 6.2.3.

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- 2.1.1 create and maintain a register of all:
 - (a) Assets, detailing their:
 - (i) make, model and asset number;
 - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications); and
 - (b) Sub-contracts and other relevant Contracts (including relevant software licences, maintenance and support Contracts and equipment rental and lease Contracts) required for the performance of the Contract Services;
- 2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Contract Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Contract Services and to enable the smooth transition of the Contract Services with the minimum of disruption;
- 2.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Detailed Solution; and
- 2.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant Contracts are added to or removed from the Contract 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 Contract Services under this Contract.
- 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 Contract Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite Customer to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF CONTRACT SERVICES

- 3.1 On reasonable notice at any point during the Term (or the First Term Extension Period and/or the Second Term Extension period (as the case may be)), the Supplier shall provide to the Customer 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 Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 3.1.1 details of the Contract Services;
 - 3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 3.1.3 an inventory of Customer Data in the Supplier's possession or control;
 - 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Contract Services;
 - 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
 - 3.1.7 such other material and information as the Customer shall reasonably require,
- (together, the **"Exit Information"**).
- 3.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer 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:
- 3.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Contract Services and shall consult with the Customer regarding such proposed material changes; and
 - 3.3.2 provide complete updates of the Exit Information on an as-requested basis

as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

- 3.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

3.4.1 prepare an informed offer for those Contract Services; and

3.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

- 3.5 From the Contract Commencement Date the Supplier shall:

3.5.1 include in the terms and conditions of employment for all new employees; and

3.5.2 shall use all reasonable endeavours to include in any updates to the terms and conditions of employment of any existing employees,

in each case delivering or reasonably likely to be delivering the Contract Services or any part thereof such term or terms (at all times compliant with all applicable Law) enabling the Supplier to comply with its obligations under Paragraph 3.1.6.

4 EXIT DETAILED SOLUTION

- 4.1 During the Implementation Phase, the Supplier shall provide for the Customer's approval an Exit Detailed Solution detailing the activity to be completed by the Supplier with key tasks, milestones, dependencies plus key resources required at either the expiry of the Term or where terminated early, on termination. An indicative list of items to be included in this Exit Detailed Solution is included in Annex 1 of this Schedule 10.

- 4.2 The Supplier shall review and (if appropriate) update the Exit Detailed Solution on a basis consistent with the principles set out in this Schedule to be provided within 6 months from the end of Contract expiry to reflect any changes in the Contract Services that have occurred since the Exit Detailed Solution was last agreed. Following such update the Supplier shall submit the revised Exit Detailed Solution to the Customer for Approval.

Finalisation of the Exit Detailed Solution

- 4.3 Within twenty (20) Working Days after service of a Termination Notice by either Party or six (6) Months prior to the expiry of this Contract, the Supplier will submit for the Customer's Approval the Exit Detailed Solution in a final form that could be implemented immediately. The final form of the Exit Detailed Solution shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Contract Services that have occurred since the Exit Detailed Solution was last agreed.
- 4.4 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Detailed Solution. If the Parties are unable to agree the contents of the Exit Detailed Solution within twenty (20) Working Days following its delivery to the Customer then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Notwithstanding the Parties may not have agreed the final form of the Exit Detailed Solution, the Supplier shall continue to provide the Contract Services in accordance with the terms of this Contract and, if required by the Customer pursuant to Paragraph 5.1 the Termination Services in accordance with the principles set out in this Schedule and the last Approved version of the Exit Detailed Solution (insofar as relevant).

5 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 5.1 The Customer 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 four (4) months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 5.1.1 the date from which Termination Services are required;
 - 5.1.2 the nature of the Termination Services required; and
 - 5.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty-four (24) months after the date that the Supplier ceases to provide the Services.
- 5.2 The Customer 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 six (6) months after the date the Supplier ceases to provide the Contract Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.
- 5.3 Upon instruction by the Customer the Supplier shall execute the Exit Detailed Solution in line with the values and behaviours referred to in Schedule 9 15 (Values and Behaviours).

Termination Assistance Period

- 5.4 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:
- 5.4.1 continue to provide the Contract Services (as applicable) and, if required by the Customer pursuant to Paragraph 5.1, provide the Termination Services;
 - 5.4.2 in addition to providing the Contract Services and the Termination Services, provide to the Customer any reasonable assistance requested by the Customer to allow the Contract Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Contract Services to the Customer and/or its Replacement Supplier;
 - 5.4.3 provide the Contract 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;
 - 5.4.4 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer; and
 - 5.4.5 within the last 12 months of the Term or upon early termination for whatever reason, demobilise and exit this Contract ensuring minimal impact to the Customer in accordance with the Exit Detailed Solution.
- 5.5 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Contract 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 Detailed Solution.
- 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 Contract Services and the Termination Services and its compliance with the other provisions of this Schedule and the Customer's Records Management Policy in Schedule 7 Part 7), the Supplier shall:
- 5.7.1 cease to use the Customer Data;
 - 5.7.2 at a time to be agreed with the Customer, the Supplier shall handover all data, records and information pertaining to the Estate that may be contained within the Supplier's System and or other documents in the possession of the Supplier to either the Customer or a new supplier (to be notified by the Customer). The format of the data shall be determined by the Customer and notified to the Supplier not less than 3 months' prior to the date on which the Customer requires the data to be provided by the Supplier.
 - 5.7.3 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
 - 5.7.4 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 Customer Data and promptly certify to the Customer that it has completed such deletion;
 - 5.7.5 return to the Customer such of the following as is in the Supplier's possession or control:
 - (a) all materials created by the Supplier under this Contract in which the IPRs are owned by the Customer;
 - (b) any items that have been on-charged to the Customer, such as consumables.
 - 5.7.6 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to 12 months after expiry or termination to:
 - (a) such information relating to the Contract Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Contract Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7.6(b).
- 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 Contract 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 Contract Services or Termination Services or for statutory compliance purposes.
- 5.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Contract 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 Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:
- 6.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Contract Services or the Charges;
 - 6.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 6.1.3 terminate, enter into or vary any licence for software in connection with the Contract Services.
- 6.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.4.4, the Customer shall provide written notice to the Supplier setting out:
- 6.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier (**Transferring Assets**);
 - 6.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,the Customer and/or the Replacement Supplier requires the continued use of; and
 - 6.2.3 which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the **Transferring Contracts**),
- in order for the Customer and/or its Replacement Supplier to provide the Contract Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Contract 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 Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value.
- 6.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 6.5 Where the Supplier is notified in accordance with Paragraph 6.2.2 that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 6.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

- 6.5.2 procure a suitable alternative to such assets and the Customer 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 Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 6.7 The Customer shall:
 - 6.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 6.7.2 once a Transferring Contract is novated or assigned to the Customer 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 Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.
- 6.9 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to Paragraph 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 Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Contract Services or part of them for any reason, Schedule 7 (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 Contract Services from transferring their employment to the Customer and/or the Replacement Supplier.
- 7.3 During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.
- 7.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, 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 Customer 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.

ANNEX 1: SCOPE OF THE EXIT DETAILED SOLUTION

- 8 The Exit Detailed Solution to be provided by the Supplier shall include as a minimum the following:
- 8.1 The role the Customer is expected to play in the development, roll-out and operation of the Exit Detailed Solution, including comment, critique and proposed amendments to the Contract Services and this Contract.
- 8.2 Identify what tasks will be completed in order to effectively demobilise the Contract ensuring minimal disruption to the Customer's Core Business.
- 8.3 Identify what Customer resources will be deployed to execute the Exit Detailed Solution.
- 8.4 Detail how data used within the Supplier's System (and other ways of working within the Suppliers operating model) will be transferred from to the incoming / new systems.
- 8.5 How the requirements relating to the final account (as referenced in the Contract) will be executed.
- 8.6 How TUPE will be managed.
- 8.7 How the requirements of the Contract and in particular Schedule 10 will be accommodated and facilitated by the Exit Detailed Solution.
- 8.8 How the Exit Information is obtained, which includes but is not limited to:
- 8.9 details of the Service(s);
- 8.10 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- 8.11 an inventory of Customer Data in the Supplier's possession or control;
- 8.12 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 8.13 a list of on-going and/or threatened disputes in relation to the provision of the Contract Services;
- 8.14 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract ;
- 8.15 such other material and information as the Customer shall reasonably require,
- 8.16 The management structure to be employed during the Termination Assistance Period;
- 8.17 How the Contract Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- 8.18 The scope of the Termination Services that may be required for the benefit of the Customer (including such of the services set out in Annex 1 (Contract Services) as are applicable);
- 8.19 A timetable and critical issues for providing assistance during termination and any charges that would be payable
- 8.20 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 Customer and/or the Replacement Supplier after the end of the Termination Assistance Period;
- 8.21 providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - 8.22 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;
 - 8.23 agreeing with the Customer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
 - 8.24 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
 - 8.25 providing an information pack listing and describing the Contract Services for use by the Customer in the procurement of the Replacement Services;
 - 8.26 answering all reasonable questions from the Customer and/or the Replacement Supplier regarding the Contract Services;
 - 8.27 agreeing with the Customer and/or the Replacement Supplier a plan for the migration of the Customer Data to the Customer and/or the Replacement Supplier;
 - 8.28 providing access to the Customer 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 Contract Services to the Customer and/or the Replacement Supplier:
 - 8.28.1 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
 - 8.28.2 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 Contract Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
 - 8.29 knowledge transfer services, including:
 - (a) providing for transfer to the Customer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Contract Services which may, as appropriate, include information, records and documents; and
 - (b) 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 Contract Services and who are still employed or engaged by the Supplier or its Sub-contractors.
- 9 The Supplier shall:
- 9.1 co-operate fully in the execution of the handover plan which is agreed with the Customer and provide skills and expertise of a suitable standard; and
 - 9.2 fully co-operate in the execution of the Customer Database migration plan and providing skills and expertise of a reasonably acceptable standard.
- 10 To facilitate the transfer of knowledge from the Supplier to the Customer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures

and operations used to provide the Contract Services, the change management process and other standards and procedures to the operations personnel of the Customer and/or the Replacement Supplier.

- 11 The information which the Supplier shall provide to the Customer and/or the Replacement Supplier pursuant to Paragraph 4 shall include:
 - 11.1 copies of up-to-date procedures and operations manuals;
 - 11.2 product information;
 - 11.3 Contracts with third party suppliers of goods and services which are to be transferred to the Customer and/or the Replacement Supplier;
 - 11.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Customer pursuant to this Schedule;
 - 11.5 information regarding any unresolved matters 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;
- 12 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 Customer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
 - 12.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 12 shall:
 - 12.1.1 sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - 12.1.2 during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Customer deems reasonable; and
 - 12.2 the Customer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

SCHEDULE 11 - ASSET (DEVELOPMENT GAIN) MANAGEMENT

1. The Customer is required to ensure all vacated properties are accounted for in line with the obligations within Schedule 22 of the Expanded PRIME Contract (EPC), where vacated on or before 31st March 2018. It is essential that the Customer's rights are protected to realise Development Gains with land registry restrictions registered in all cases. It is essential the Customer's business is conducted in a professional manner that upholds and promotes the Customer's values, with due diligence on all qualifying expenditure a key requirement in agreeing final Development Gain outcomes. The Customer's Estates Supply Chain Providers are required to support such due diligence, challenge assumptions and charges in order to ensure full and accurate final accounting, based on their expert opinion.
2. All qualifying Development Gain properties will have been part or fully vacated on or before 31st March 2018. The Customer has the right within their gift to deem dispose of properties vacated on 31st March 2018 up until 30th September 2019 (18 months). Any property not deemed disposed by this date will be deemed disposed after 31st March 2023 (5 years), unless the property has been disposed prior to this date.
3. The Supplier shall provide valuable oversight to the Development Gain process and act as an escalation point providing professional assurance to the Customer, understanding the provisions and obligations of Schedule 22 of the EPC. It is important that all parties work collaboratively to achieve the best possible outcome for the Customer.
4. The Customer's Estates Supply Chain must fulfil its Schedule 22 obligations and continually add value to the Customer. In order to achieve this, the Supplier shall support the Customer in:
 - a) Ensuring all property files are received
 - b) Due diligence and checking of information provided
 - c) Checking of evidence of information provided
 - d) Checking qualifying expenditure is legitimate
 - e) Checking Development Gain calculations
 - f) Agreeing appropriate governance and recommend sign off of Development Gain files
 - g) Drafting annual Development Gain pool report
 - h) Obtaining sign off of Development Gain pool report

In addition to the above, the Supplier shall assist the Customer (where required) in:

- i) Providing Red Book property market valuation reports
 - j) Populating a monthly tracker to monitor progress
 - k) Raising queries with the PRIME Contractor and manage the response
 - l) Producing a MI savings tracker
 - m) Monthly MI / progress report to the Integrator
 - n) Escalate high profile issues/concerns within the Development Gain mechanism in line with the provisions of Schedule 22 of the EPC
5. The Supplier shall review, critique, challenge and add to any professional advice provided to the Customer in order to maximise the Development Gain position and support the wider process in line with the provisions of Schedule 22 of the EPC.

SCHEDULE 12 – GOVERNANCE

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Chairperson" has the meaning given to it in Paragraph 2.1.1;

"Project Board" has the meaning given to it in Paragraph 2.1; and

"Temporary Member" has the meaning given to it in Paragraph 6.9.

2 PROJECT BOARD

2.1 The Customer and the Supplier shall establish and maintain throughout the Term a project board (the **Project Board**), consisting of at least:

2.1.1 three (3) members from the Customer, one of which will be the chairperson (the **Chairperson**) of the Project Board;

2.1.2 three (3) members from the Supplier.

2.2 The Customer's Representative may fulfil the Customer's obligations and exercise the rights of the Customer, save as otherwise notified by the Customer, for the purposes of this Schedule 12.

3 FUNCTION

3.1 The functions of the Project Board shall be:

3.1.1 to provide a means for the joint review of all aspects of the performance of this Contract;

3.1.2 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Contract including ensuring dissemination of information and consideration of the views of all the stakeholders connected with this Contract; and

3.1.3 consideration of issues relating to:

(a) escalation of issues (including unresolved issues requiring escalation to the Customer);

(b) the quality management of delivery of the Contract Services;

(c) innovation;

(d) performance levels;

(e) compensation events and service credits;

(f) consider the outcome of transaction review meetings

attended by the Customer or Customer Representative and the Supplier;

(g) customer feedback; and

(h) any other issues that may be determined from time to time by the parties.

4 ROLE

The role of the Project Board as regards this Contract is to make recommendations to the Customer and to the Supplier, which the Customer and the Supplier may accept or reject at their complete discretion. Neither the Project Board itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Contract or to make any decision binding on the parties. The Customer and the Supplier shall not rely on any act or omission of the Project Board, or any members of the Project Board acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of the Customer or of the Supplier under this Contract. No discussion, review or recommendation by the Project Board shall relieve the Customer or the Supplier of any liability or vary any such liability or any right or benefit.

5 REPRESENTATIVES

The Customer and the Supplier may appoint their representatives on the Project Board and remove those representatives and appoint replacements, by written notice delivered to the other Party at any time. A representative on the Project Board may appoint and remove an alternate (who may be another representative of that Party) in the same manner. If a representative is unavailable (and the other Parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

6 PRACTICES AND PROCEDURES

6.1 Place and time.

6.1.1 Subject to Paragraph 6.1.2, Project Board meetings will take place at such places and times as the Parties shall decide. Agendas will be circulated by the Supplier ten days in advance (with supporting papers) and any party wishing to raise other agenda items (including an item under "Any other business") will notify all other parties (with supporting papers) no later three days in advance; and

6.1.2 In the event of an emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

6.2 **Frequency.** The Project Board shall meet at least once every month from the starting date until such time as the Project Board shall agree otherwise. In the event that the Parties agree that the Project Board shall meet less frequently than monthly, the Project Board shall meet not later than once each quarter.

6.3 Quorum.

6.3.1 The quorum for the proper and valid conduct of any business of the

Project Board shall be at least four (4) persons including the Customer's representative and the Supplier's representative.

6.3.2 If a quorum is not present at any meeting of the Project Board within thirty (30) minutes of that meeting's start time, it shall be adjourned to the same time and place on the date which is five days later or such other time as the Parties may agree.

6.4 **Recommendations of the Project Board.** Recommendations and other decisions of the Project Board must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the Customer and not less than one (1) representative of the Supplier.

6.5 **Minutes.** Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Project Board shall be recorded by the Supplier and copies circulated promptly to the Customer, normally within ten days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the Supplier and shall be open to inspection by the Customer at any time, upon request.

6.6 **Voting.** Each member of the Project Board shall have one (1) vote. In the event of deadlock on any issue before the Project Board, the Chairperson shall have the casting vote.

6.7 **Attendance.** Each of the Parties shall use all reasonable endeavours to ensure the regular attendance of their representatives at all meetings of the Project Board and will, unless unavoidable, ensure that their representatives are appropriately empowered to agree matters on its behalf.

6.8 **Telephone meetings etc.** Where the representatives of the Project Board consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one (1) representative of the Customer and one (1) representative of the Supplier) meetings may also be held by telephone call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times at that meeting a quorum of the Project Board is able to so participate.

6.9 **Temporary members.** The members of the Project Board may from time to time invite to any meeting of the Project Board such other persons including Sub-Suppliers and/or Customer Supply Chain Members (**Temporary Members**) as members of the Project Board may agree (in accordance with Paragraph 6.4 (Recommendations)). For the avoidance of doubt, Temporary Members shall have no voting rights.

SCHEDULE 13 – GAIN SHARE

1 DEFINITIONS

1.1 In this Schedule unless the context otherwise requires, words and phrases shall have the following meanings:

Approved Savings Proposals	those Savings Proposals that are accepted in principle by the Customer in accordance with Paragraph 1.4;
Gainshare	the 50%:50% share attributed to the Customer (on the one hand) and the Contractor, including the Customer Supply Chain Members (on the other hand) and used for the purpose of calculating the amount of any Savings Payment;
Gainshare Implementation Plan	an implementation plan which shall set out in more detail the way in which the Contractor intends that the Savings Proposal shall be implemented and the timetable for payments or adjustments to any element of the prices paid in accordance with the agreed Gainshare ratio
Maximum Savings Payment	ten per cent (10%) of the Contract Charges for the relevant Contract Year;
Savings	<p>a proposed reduction in the Contract Charges for a Contract Year) by the Customer, either by way of:</p> <p>(a) a cash saving which is a reduction in Contract Charges;</p> <p>(b) an efficiency saving which is where a cost increase in Contract Charges is avoided or reduced,</p> <p>and may include a cash or efficiency saving reducing the amount that would otherwise be recoverable by the Contractor;</p>
Savings Payment	the payment made to the Contractor in accordance with this Schedule 13 which may not in any event exceed the Maximum Savings Payment;
Savings Proposal	a written proposal by the Contractor under Paragraph 1.2 for Savings taking into account all appropriate technical, operational and commercial considerations.
Supplier Savings Account	Means the account referred to in Paragraph 2.2;

Supplier Savings Budget

The budget showing the estimated savings in each relevant Contract Year under existing Approved Savings Proposals

- 1.2 The Contractor makes proposals to the Customer Representative for a new or different way of providing the Contract Services. A Savings Proposal clearly states that it is submitted for consideration under this Schedule 13 and include as a minimum:
- (a) a business case for the new or different way the Contractor intends to provide the Contract Services or otherwise the nature of the proposed Savings;
 - (b) the potential direct and indirect cost savings for the Contractor and the Customer;
 - (c) the potential direct and indirect costs which might be incurred by the Contractor and the Customer;
 - (d) the potential benefit(s) (financial or otherwise) to the Contractor and the Customer;
 - (e) the amendments to this contract, necessary to give effect to the Proposal and the Contractor's assessment of:
 - (f) any impact on the delivery of the Contract Services;
 - (g) any impact on works and/or services provided by other Customer Supply Chain Members;
 - (h) the operational, commercial and reputational impact on the Customer and any risks associated with the Savings Proposal including any risk of not implementing the Savings Proposal;
 - (i) where the proposal is made jointly with other Customer Supply Chain Members, whether it is proposed to share any Savings Payment and the basis upon which the Savings Payment will be shared.
- 1.3 The Contractor and the Customer shall meet to discuss the Proposal and attempt to agree the investment (financial or otherwise) to be contributed by the Contractor and the Customer, the estimated amount of Savings, the timing of any payments or adjustments and the proportion of the costs and losses to be borne by the Contractor and the Customer should the Savings Proposal be aborted or not meet its financial objectives. The Contractor shall submit a revised Savings Proposal to the Customer.
- 1.4 The Customer shall assess the Savings Proposal and, in writing within one (1) Month (or such other time as agreed between the Parties), either accepts it in principle, rejects it or offers recommendations or refinements for the Contractor to submit a revised Savings Proposal. Any Savings Proposal may require consent of the Customer under the Framework Contract.
- 1.5 Where the Savings Proposal is accepted in principle by the Customer and such Contract is put in writing, the Contractor shall formulate the Gainshare Implementation Plan.
- 1.6 The Contractor shall implement the Savings Proposal in accordance with the Gainshare Implementation Plan once the Gainshare Implementation Plan is agreed between the Parties. The Contractor and the Customer shall comply with any obligations they have assumed, including adjustments to the prices paid and obligations to make payments in accordance with the timetable outlined in the Gainshare Implementation Plan.
- 1.7 Following implementation, the Parties shall meet to discuss the implementation as a whole, including a cost and benefit review.
- 1.8 The Contractor shall provide regular updates to the Customer on:

- (a) Savings Proposals that have been submitted for consideration, and
- (b) the resultant benefits that have been derived from Savings Proposals which have been implemented.

Such information shall be collated by the Customer Representative as management information.

2 SAVINGS PAYMENT

- 2.1 At each Project Board meeting the Supplier shall report on progress of Approved Savings Proposals including actual savings and overspend against the Supplier Saving Budget.
- 2.2 The Supplier shall record all actual savings and any overspend in the Supplier Savings Account, allocating the amount of actual savings or overspend (as the case may be) to the relevant Approved Savings Proposal.
- 2.3 Subject to compliance with Paragraph 2.6, the Supplier shall be entitled to a Savings Payment where at the end of each relevant Contract Year there is credit balance of actual savings recorded in the Supplier Savings Account.
- 2.4 The amount of Savings Payment is calculated with reference to the applicable Gainshare as applied to the credit balance of actual savings recorded in the Supplier Savings Account at the end of the relevant Contract Year. In any relevant Contract Year the Savings Payment cannot exceed the Maximum Savings Payment.
- 2.5 At the end of each relevant Contract Year, after any Savings Payment has been paid to the Supplier, the balance of the Supplier Savings Account shall return to zero (0) provided that:
 - (a) where the Supplier Savings Account is in deficit at the end of the relevant Contract Year, the net overspend will be carried over to the next relevant Contract Year; and
 - (b) any surplus in the Supplier Savings Account after payment of the Maximum Savings Payment may be used as credit against any overspend in the subsequent relevant Contract Year but shall not entitle otherwise be carried over to subsequent years.
- 2.6 The Supplier shall be only entitled to a Savings Payment for the relevant Contract Year where:
 - (a) any reduction in the Supplier Savings Account under Paragraph 6 of Schedule 1 (Service Levels) has been fully accounted for; and
 - (b) the Actual Savings:
 - (a) are properly attributable to the performance of the Supplier (including any relevant Customer Supply Chain Members) under any Approved Savings Proposals; and
 - (b) does not arise, or are not materially contributed to, through a reduction in the standard of performance of the Services; and
 - (c) the Saving has effects which was contemplated in Paragraph 2.2; and
 - (d) no Supplier Termination Event is outstanding or has occurred during the relevant Contract Year (which event not been satisfactorily remedied in accordance with this Contract) or where no equivalent termination events under any relevant contracts between the Customer and any Customer Supply Chain Members are

outstanding or have occurred during the relevant Contract Year (and not been satisfactorily remedied in accordance with their respective contracts).

- 2.7 Within 30 Working Days of the end of a relevant Contract Year the Supplier shall submit to the Customer a statement (**Supplier Savings Statement**) of:
- (a) total expenditure;
 - (b) a summary of what, if any actual savings have been achieved;
 - (c) a summary of any overspend and a detailed explanation of why the Supplier believes that Savings Proposals failed to generate any Actual Savings;
 - (d) whether the Supplier considers itself entitled to a Savings Payment or whether it considers a repayment to the Customer is required of any Savings Payments made in previous relevant Contract Years; and
 - (e) the basis of calculation of any Savings Payment to which the Supplier considers itself entitled.
- 2.8 Within 20 Working Days of receipt of the Supplier's Statement under Paragraph 2.7, the Customer shall provide the Supplier with its assessment (**Customer Savings Statement**) of the amount, if any, that the Customer considers the Supplier is entitled to by way of a Savings Payment or any repayment to the Customer (as the case may be).
- 2.9 Following receipt by the Supplier of the Customer Savings Statement, the Supplier shall provide any Supporting Documentation requested by the Customer and shall respond to any requests for further information requested by the Customer.
- 2.10 The Parties shall convene such further meetings and make such other discussions, communication and exchanges with a view to reaching Contract in relation to whether the Supplier is entitled to any Savings Payment and if so the amount of such payment.
- 2.11 Where the Supplier has issued a Supplier Savings Statement under Paragraph 2.7, the Customer shall, no later than 12 weeks from the end of the relevant Contract Year, issue a final statement (a **Final Customer Savings Statement**) of the amount, if any, that it considers to be due to the Supplier by way of a Savings Payment for the preceding relevant Contract Year.
- 2.12 Where at the end of the relevant Contract Year, the aggregate Actual Savings over the Term are less than the aggregate Overspend, the Supplier shall repay any Savings Payment made in respect of previous relevant Contract Years to the extent that by so doing the balance of the Supplier Savings Account shall be "zero". Any deficit after such repayment shall be carried forward to the next relevant Contract Year.
- 2.13 The Supplier may make application for a Savings Payment following issue of the Final Customer Savings Statement save in relation to the end of the Term when it shall include its application in the Final Statement. The amount due shall be the amount stated in the Customer Savings Statement or in the absence of such statement, the amount stated in the Supplier's application provided that the same does not exceed the amount stated in the Supplier Savings Statement.
- 2.14 The due date for payment of the amount stated as due to the Supplier or the Customer (as the case may be) in relation to a payment under the date of the Final Customer Savings Statement. The final date for payment in respect of such payment shall be 30 days after the due date.
- 2.15 If the Customer (or the Supplier) intends to pay less than the amount stated in the Final Customer Savings Payment, it may issue a notice no later than the date which is one day before the final date for payment for such payment stating the amount which it considers to be due on the date of such notice and the basis upon which it is calculated.

- 2.16 If the amount stated in the Customer Savings Statement is disputed such dispute may be referred for resolution under Clause 24 (Dispute Resolution Procedure).
- 2.17 The Approval by the Customer of a Savings Proposal shall not in any way limit or excuse the performance of the Supplier of its obligations under this Contract. The provisions of this Schedule are without prejudice to the Customer's other rights against the Supplier in respect of any overspend or otherwise.

SCHEDULE 14 - FINANCIAL DISTRESS

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Rating Agency	a credit rating agency generally recognised in the United Kingdom business sector as publishing ratings of the ability of a debtor to pay interest and the likelihood of debt default.
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2 CREDIT RATING AND DUTY TO NOTIFY

2.1 The Supplier shall promptly and in any event within 5 Working Days notify the Customer (or shall procure that its auditors notify the Customer promptly or within 5 Working Days) in respect of the Supplier and any Key Sub-contractor:

- (a) of any material change to the relevant organisation's financial standing, including but not limited to the events set out at paragraph 3.1; and/or
- (b) of any material change to the organisation that might impact on its on-going financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end; and/or
- (c) of any proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the relevant organisation's financial viability; and/or
- (d) the occurrence of the downgrade in the credit rating of the relevant organisation issued by any Rating Agency.

2.2 If there is any downgrade of the credit rating issued by any Rating Agency for either the Supplier, a Key Sub-contractor or the Supplier shall ensure that the Supplier's auditors or the Key Sub-contractor's auditors (as the case may be) thereafter provide the Customer within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Customer with written calculations of the quick ratio for the Supplier or the Key Sub-contractor as the case may be as at the end of each Contract Year or such other date as may be requested by the Customer. For these purposes the "quick ratio" on any date means:

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 Key Sub-contractor (as the case may be);
- B is the value of all marketable securities held by the Supplier or the Key Sub-contractor (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 Key Sub-contractor (as the case may be); and

D is the value at the relevant date of the current liabilities of the Supplier or the Key Sub-contractor (as the case may be).

2.3 The Supplier shall regularly monitor the credit ratings of the Supplier and each Key Sub-contractor.

3 FINANCIAL DISTRESS EVENT

3.1 The following are the events specifically required to be notified under Paragraph 2.1 (without prejudice to the Supplier's general notification duty under that paragraph):

- (a) the Supplier 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;
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier or any Key Sub-contractor;
- (c) the Supplier or any Key Sub-contractor committing a material breach of covenant to its lenders;
- (d) a Key Sub-contractor notifying the Customer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (e) any of the following:
 - (a) commencement of any litigation against the Supplier or any Key Sub-contractor with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (b) non-payment by the Supplier or any Key Sub-contractor of any financial indebtedness;
 - (c) any financial indebtedness of the Supplier or any Key Sub-contractor becoming due as a result of an event of default; or;
 - (d) the cancellation or suspension of any financial indebtedness in respect of the Supplier or any Key Sub-contractor, andin each case which the Customer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Contract Services in accordance with this Contract.

3.2 Upon notification of an event under Paragraph 2.1 (or if the Customer becomes aware of the event without notification and brings the event to the attention of the Supplier), the Customer may in its absolute discretion inform the Supplier that it considers the event to be a Financial Distress Event in which case the Supplier shall have the obligations and the Customer shall have the rights and remedies as set out in Paragraphs 3.4 to 3.7.

3.3 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Customer shall not exercise any of its rights or remedies under Paragraph 3.4 without first giving the Supplier 10 Working Days to:

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

3.4 The Supplier shall (and shall procure that any relevant Key Sub-contractor shall):

- (a) at the request of the Customer, meet the Customer 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 Customer may permit and notify to the Supplier) to review the effect of the Financial Distress Event on the continued performance and delivery of the Contract Services in accordance with this Contract; and
 - (b) where the Customer reasonably believes (taking into account the discussions and any representations made under Paragraph (a)) that the Financial Distress Event could impact on the continued performance and delivery of the Contract Services in accordance with this Contract:
 - (a) submit to the Customer 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 Customer may permit and notify to the Supplier in writing); and
 - (b) provide such financial information relating to the Supplier as the Customer may reasonably require.
- 3.5 The Customer shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Customer 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 Customer 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 Customer or referred to the Dispute Resolution Procedure under Paragraph 3.6.
- 3.6 If the Customer 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 Contract, then it may either agree a further time period for the development and Contract of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.7 Following approval of the Financial Distress Service Continuity Plan by the Customer, 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 Contract Services in accordance with this Contract;
 - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph (a), submit an updated Financial Distress Service Continuity Plan to the Customer for its approval, and the provisions of Paragraphs 3.5 and 3.6 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).
- 3.8 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 3.2 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Customer and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 3.7.

4 TERMINATION RIGHTS

4.1 The Customer shall be entitled to terminate this Contract under Clause 8 (*Termination by the Customer*) if:

- (a) the Supplier fails to notify the Customer of an event of the kind contemplated by Paragraph 2;
- (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.4 to 3.6; 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 3.7(c).

SCHEDULE 15 - VALUES AND BEHAVIOURS

VALUES & BEHAVIOURS

The Supplier shall operate on behalf of the Customer and as such uphold, promote and live the Customer's values:

Achieving the Best; using all our resources efficiently so that high and consistent standards of service are provided;

Respecting People; by treating those that engage with the Customers, the Customer Employees and the Customer's Supply Chain Members with respect, welcoming diversity and valuing other's ideas and responding fairly to individual needs;

Making a Difference; by providing the Services so that the Customer's Employees can support, challenge and inspire the Customer's Customers to improve their lives and help each other to make a difference.

Looking Outwards; by working with others and learning how to get better at what we do.

In addition, the Supplier shall interact with the Customer, the Customer's Employees, other Government departments and Other Government Departmental Colleagues, the Customer's Supply Chain Members, those that engage with the Customer and the general public ensuring behaviours are in line with the Customer's values:

- The health and safety of individuals is the Customer's primary concern. The Supplier shall deliver the Contract Services with due regard for the highest possible level of health and safety and the Customer's policies, processes and ways of working with regards to health and safety;
- Ensuring all Suppliers operate in a fair and consistent manner, respecting each party's right to make a fair and reasonable profit whilst aiming to reduce the overall cost of occupancy for the Customer and delivering all the required contractual obligations;
- ethical and transparent business dealings, ensuring Staff uphold the highest possible level of integrity and probity. The Customer's Supply Chain will operate on an Open-Book basis;
- a full recognition that a successful Supplier will require high levels of cooperation between the Customer, the Supplier and the Customer's Supply Chain Members;
- protecting and upholding the brand values and reputation of the Customer and ensuring that this is not in any way damaged, compromised or brought into question; and
- shall not use the Customer's reputation and the relationship as a Supplier to the Customer for any advertising and or promotional purposes without the prior written permission from the Customer.

SCHEDULE 16 - SECURITY MANAGEMENT

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Breach of Security	<p>the occurrence of:</p> <ul style="list-style-type: none">(a) any unauthorised access to or use of the Services, the Customer Premises, the Sites, the Supplier System, the Customer 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 Customer Data) used by the Customer and/or the Supplier in connection with this Contract; and/or(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Contract, in either case as more particularly set out in the Schedule 5 and this Schedule and the Baseline Security Requirements;
CHECK System	the scheme for penetration testing of data processing systems operated by the Communications-Electronics Security Group;
ISMS	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;
Security Policy Framework	the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Customer to the Supplier.
Security Tests	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.

2 INTRODUCTION

- 2.1 The provisions of this Schedule are supplemental to the requirements of Schedule 5 and the relevant Customer Policies. In particular:

- (a) compliance by the Supplier with Schedule 5 and/or the Customer Policies does not relieve the Supplier from the obligation to satisfy a requirement of this Schedule; and
 - (b) compliance with this Schedule does not relieve the Supplier from the obligation to satisfy Schedule 5 and/or any Customer Policies.
- 2.2 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.
- 2.3 The Parties shall each appoint a member of the Project Board to be responsible for security. The initial member of the Project Board appointed by the Supplier for such purpose shall be the person named as such in the Letter of Appointment and the provisions of Clause 2.3 (Key Personnel) shall apply in relation to such person.
- 2.4 The Customer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.5 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.6 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Customer Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Customer Data remains under the effective control of the Supplier at all times.
- 2.7 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Customer.
- 2.8 The Customer and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Customer's security provisions represents an unacceptable risk to the Customer requiring immediate communication and co-operation between the Parties.

3 ISMS

- 3.1 The Supplier has developed an ISMS (information security management system) for the purposes of this Contract which:
 - (a) shall be tested in accordance with the requirements of the Customer; and
 - (b) shall comply with the requirements of Paragraphs 3.3 to 3.5.
- 3.2 The Supplier acknowledges that the Customer places great emphasis on the reliability of the Contract 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 Customer in writing, be developed to protect all aspects of the Contract Services and all processes associated with the delivery of the Contract Services, including the Customer Premises, the Sites, the Supplier's System, the Customer's ICT System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract;

- (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:
 - (a) is in accordance with Law and this Contract;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) complies with the Baseline Security Requirements;
 - (d) addresses issues of incompatibility with the Supplier's own organisational security policies;
 - (e) meets any specific security threats of immediate relevance to the Contract Services and/or Customer Data;
 - (f) complies with the security requirements as set out in this Contract;
 - (g) complies with the Customer Policies (including, without limitation, IT policies);
 - (h) is in accordance with the Security Policy Framework; and
 - (i) document the security incident management processes and incident response plans;
 - (d) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Contract 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 Customer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
 - (e) be certified by (or by a person with the direct delegated Customer 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 Customer in advance of issue of the relevant Security Management Plan).
- 3.4 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 Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier which provision the Supplier shall comply with.
- 3.6 The ISMS shall be operated and maintained in accordance with the terms of this Contract.
- 3.7 Approval by the Customer of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.
- 4 SECURITY MANAGEMENT PLAN**
- 4.1 The Supplier shall maintain an up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.

4.2 The Security Management Plan at all times shall:

- (a) comply with the Baseline Security Requirements;
- (b) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
- (c) detail the process for managing any security risks from Customer Supply Chain Members, Sub-contractors and third parties authorised by the Customer with access to the Contract Services, processes associated with the delivery of the Contract Services, the Customer Premises, the Sites, the Supplier's System, the Customer's ICT System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Customer Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Contract Services;
- (d) unless otherwise specified by the Customer in writing, protect all aspects of the Contract Services and all processes associated with the delivery of the Contract Services, including the Customer Premises, the Sites, the Supplier's System, the Customer's IT System (to the extent that it is under the control of the Supplier) and any ICT, Information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Contract Services;
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Contract Services and all processes associated with the delivery of the Contract Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Contract Services comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);
- (f) demonstrate that the Supplier has minimised the Customer 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);
- (g) set out the plans for transiting all security arrangements and responsibilities from those in place at the Contract Commencement 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 this Contract and this Schedule;
- (h) set out the scope of the Customer ICT System that is under the control of the Supplier (if any);
- (i) 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;
- (j) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Contract Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and
- (k) be in accordance with the Security Policy Framework.

4.3 The Security Management Plan shall be operated and maintained in accordance with the terms of this Contract.

- 4.4 Approval by the Customer 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 Contract Services and/or associated processes;
- (c) any new perceived or changed security threats; and
- (d) any reasonable change in requirement requested by the Customer.

- 5.2 The Supplier shall provide the Customer 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 Customer. 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 Customer request, a change to the Customer's requirements or Contract Services or otherwise) shall be subject to a Variation and shall not be implemented until Approved in writing by the Customer.

- 5.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

6 SECURITY TESTING

- 6.1 The Supplier shall conduct 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 Contract Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Contract 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 Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form

Approved by the Customer 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 Customer pursuant to this Contract, the Customer 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 Customer may notify the Supplier of the results of such tests after completion of each such test. If any such Customer test adversely affects the Supplier's ability to deliver the Contract 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 Customer 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 Customer 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 Customer'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 Customer 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 the Contract or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 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 26.2 (Rectification Plan Process).

7 ISMS COMPLIANCE

- 7.1 The Customer 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 the Contract and the Baseline Security Requirements.
- 7.2 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in the Contract and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Customer 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 Customer 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 the Contract 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 Customer 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 Customer) necessary to:
 - (b) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (c) 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;
 - (d) 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 Customer, acting reasonably, may specify by written notice to the Supplier;
 - (e) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
 - (f) supply any requested data to the Customer or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Customer's request within 2 Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
 - (g) as soon as reasonably practicable provide to the Customer 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 Customer.
- 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 this Contract (Statement of Requirements) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Customer.

9 VULNERABILITIES AND CORRECTIVE ACTION

- 9.1 The Customer 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 Customer'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 fourteen (14) days of release, 'Important' within thirty (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 Contract Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Contract Service;
 - (b) the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Contract Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Customer; or
 - (c) the Customer 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 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 twelve (12) months of release of the latest version ; or
 - (b) is agreed with the Customer 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 Operational Services Commencement Date) provide a report to the Customer within five (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 Contract Services (in order to reduce the attack surface of the Supplier Solution and IT Environment); and
 - (h) inform the Customer 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 Customer.
- 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 CONFLICT WITH THE CONTRACT**
- 10.1 In the event of any conflict between this Schedule and Schedule 5 (Security Management Plan) the provisions of this Schedule shall apply.

ANNEX 1: BASELINE SECURITY REQUIREMENTS

1 Higher Classifications

- 1.1 The Supplier shall not handle Customer 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 Customer.

2 End User Devices

- 2.1 When Customer 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 Customer data and services must be under the management Customer of Customer 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 Customer of the Customer. Unless otherwise agreed with the Customer 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 Customer 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 Customer.

3 Data Processing, Storage, Management and Destruction

- 3.1 The Supplier and Customer recognise the need for the Customer'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 Customer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Customer 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 Customer in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Contract and provided that storage, processing and management of any Customer information is only carried out offshore within:
- (a) the European Economic Area (EEA);
 - (b) in the US if the Supplier and or any relevant Subcontractor have signed up to the US-EU Privacy Shield Contract; 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 Customer with all Customer Data on demand in an agreed open format;
 - (b) have documented processes to guarantee availability of Customer Data in the event of the Supplier ceasing to trade;

- (c) securely destroy all media that has held Customer Data at the end of life of that media in line with Good Industry Practice; and
- (d) securely erase any or all Customer Data held by the Supplier when requested to do so by the Customer.

4 Networking

- 4.1 The Customer requires that any Customer 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 Customer 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 Customer 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 Customer 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 Customer Data except where agreed with the Customer in writing.
- 6.4 All Supplier Personnel that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.
- 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 Customer 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 8 for a period of at least 6 months.