

RESTRICTED COMMERCIAL

FRAMEWORK SCHEDULE 4

Part B

MODEL ORDER FORM AND CALL-OFF TERMS

FRAMEWORK SCHEDULE 4
ORDER FORM AND CALL-OFF TERMS

Part 1 - Order Form

This Order Form is issued subject to the provisions of the framework agreement RM1008 entered into between the Authority and the Supplier on 14th March 2013 for **Seasonal Courier Services ("Framework Agreement")**. The Supplier agrees to supply the Services specified below on and subject to the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and the Call-Off Terms, together with the Schedules thereto.

Date	28/02/2013	Order Number	DFE/GQL/003 To be quoted on all correspondence relating to this Order
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FROM

Customer	DfE, STA "Customer"
Customer's Address	Earlsdon Park, 53-55 Butts Road, Coventry CV1 3BH
Invoice Address	3 rd Floor Companies House, Crown Way, Cardiff CF14 3UW
Contact Ref:	Name: Jonathan Bryan Address: DfE Earlsdon Park, 53-55 Butts Road, Coventry CV1 3BH Phone: 02072275156 E-mail: jonathan.bryan@education.gsi.gov.uk Fax: n/a

TO

Supplier	Parcelforce Worldwide Ltd
Supplier's Address	100 Victoria Embankment, London EC4Y 0HQ
Account Manager	Name: Rebecca Hope Address: Parcelforce Worldwide, Lytham House, Caldecotte Lake Drive, Cladecotte, Milton Keynes, MK7 8LE Phone: 01908 687000 / 07801 092628 E-mail: rebecca.hope@parcelforce.co.uk Fax: N/A

1. TERM

(1.1) Commencement Date

14/03/2013

(1.2) Expiry Date

This Contract shall expire on 31/08/2017 unless terminated earlier pursuant to this Contract, as referred to in Part 2, Clause 4, Contract Period.

(1.3) Option to Extend the Contract

- 1.3.1 The Customer retains an option to extend the Contract for a further One (1) Year from 31/08/2017. The Customer may exercise any such option by giving the Supplier notice of its intention to renew not less than three (3) Months prior to the date when this Contract would otherwise expire.

2. SERVICES REQUIREMENTS

(2.1) Services and Deliverables required

Details of any other Optional Services required by the Customer:

The full service delivery requirements for the Seasonal Courier Service is set out in, Schedule 12 – Specification, of this Order Form.

(2.2) Lots under which the above Services are being supplied: NOT APPLICABLE

(2.3) Performance / Premises

The Seasonal Courier Service will need to be provided at all Collation Providers, Examination Centres, Residential Addresses and Scanning Bureaus as described in Schedule 12 of this Order Form (the specification)

(2.4) Standards

Quality Standards

As referred to in the specification (where applicable)

Technical Standards

As referred to in the specification (where applicable)

(2.5) Outline Security Requirements

As set out Schedule 2, Security Management Plan

Additional Security Requirements

As set out in Schedule 12, Services Specification, Appendix G, Security Policy Framework (SPF)

The Suppliers compliance with the Security Requirements are as described in Annex A, Supplier Solution, in response to the Security Questionnaire and specifically in the completed SPF provided in response to Question 6.

(2.6) Disaster Recovery and Business Continuity

Business Continuity and Disaster Recovery Plan to be provided and agreed within 5 working days of contract Award as per A10 of the specification and included at Schedule 5

(2.7) Disaster

Disaster means the occurrence of one or more events which, either separately or cumulatively, mean that the Services or a material part thereof will be unavailable for a period

of 2 days or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period.

(2.8) Staff Vetting Procedures

As per Schedule 12, Services Specification, paragraph A6.4, Personnel

(2.9) Variations to the Contract

No changes to this Contract (a "Change") shall be valid unless agreed in accordance with the Change Control Procedure set out in Schedule 1. Any proposed change to the method of the performance of the Services by the Supplier shall be first agreed by the Customer.

3. SUPPLIER SOLUTION

(3.1) Supplier Solution

Set out in Annex A

(3.2) Key Personnel

3.2.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any sub-contractor shall obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Term, and, where possible, at least two (2) months' written notice must be provided by the Supplier of its intention to replace Key Personnel.

3.2.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or sub-contractor. The Customer may interview the candidates for Key Personnel positions before they are appointed.

3.2.3 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced. The Supplier shall ensure that an effective knowledge transfer is performed between the outgoing member of staff and his / her replacement. Copies of all relevant hand over documentation shall be provided to the Customer on request. The Supplier shall ensure that it instigates active deputisation and succession planning for all Key Personnel.

3.2.4 The Customer may also require the Supplier to remove any Key Personnel that the Customer in its reasonable opinion considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

3.2.5 Key Personnel of the Supplier to be involved in the provision of the Services and Deliverables are as follows

I.T Consultant: Simon Bacon
Head of Contracts: Eddie Kane
Key Account Manager: Rebecca Hope
Contract Manager: Indy Sahota

Platinum Helpdesk
Board Sponsorship

(3.3) TUPE: Transfer of Employees

Option B of Clause 16. of the Terms and Conditions will apply to this Contract.

(3.4) Sub-Contractors to be involved in the provision of the Services and Deliverables

For the avoidance of doubt, clauses 34.1 and 34.2 of the Call Off Terms shall not apply to any owner drivers or agency drivers used by the Supplier in the provision of the Services. However, the Supplier shall be fully liable for the performance of the Services in accordance with this Agreement which are performed by any owner drivers or agency drivers that the Supplier may employ.

(3.5) Security Management Plan

As set out Schedule 2, Security Management

(3.6) Relevant Convictions

No Relevant Convictions would prevent the Supplier's staff from being engaged on this contract but the Supplier must ensure that the Staff Vetting Procedures referred to at 2.8 above are complied with.

(3.7) Training

The Supplier is required to provide training to the Supplier's staff and/or the Client's staff as outlined in Schedule 12, Services Specification at paragraphs A5.7 and A6.3.

(3.8) Supplier's inspection of the Premises and Infrastructure

The Supplier will only be required to access loading/unloading/reception areas in provision of this service.

4. SOFTWARE

4.1 Licence to Use Supplier Software and Systems

The Supplier grants to the Customer a royalty-free, non-exclusive, non-transferable, sub-licensable, perpetual and irrevocable licence to use and access any Supplier Software and Systems to the extent necessary to receive the Services during the continuance of this Agreement (including any exit period). The Customer will comply with the Supplier's reasonable security policies and operating procedures current from time to time which are notified in advance and in writing to the Customer.

Where the Supplier proposes to use Software, which will require the Client to enter into a license arrangement, then the conditions listed in Schedule 7, Software Terms category as noted in this table will apply.

			Applicable Terms				
Software	Supplier	Purpose	Gold Licence Terms	Silver Licence Terms	Bronze Licence Terms	COTS Licence Terms	Assigned Software Terms
			√				
			√				
			√				
			√				

5. PERFORMANCE OF THE SERVICES AND DELIVERABLES

(5.1) Implementation Plan and Milestones (including dates for completion)

5.1.1 The Supplier provided a draft Implementation Plan ("**Draft Implementation Plan**") as part of its final tender submission in response to the Project and Account Management and Governance Questionnaire, Question 11, from which the key milestones and deliverables, if any, have been extracted into the table below.

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)	Delay Payments

(5.2) Approval of Implementation Plan

1.1. The Supplier agrees that immediately following the entering into of this Agreement, the Supplier shall work with the Customer and the other Customer contractors to agree appropriate revisions to the Draft Implementation Plan; for the implementation of any new aspect of the service.

1.1.1. so as to ensure that it co-ordinates with the implementation plan activities of the Customer and the other Customer contractors; and

1.1.2. it is modified to take reasonable account of any reasonable comments which the Customer may have on the Draft Implementation Plan.

5.2.2 The Supplier agrees that it shall not refuse to make any reasonable changes to the Draft Implementation Plan which is required by the Customer with a view to ensuring that the Supplier is in a position to provide the Services on and following the Commencement Date.

5.2.3 Following approval of the modified Draft Implementation Plan by the Customer (such approval to be entirely at the discretion of the Customer) the modified Draft Implementation Plan shall become the "Implementation Plan".

5.2.4 After approval of the Implementation Plan:

5.2.4.1 both parties shall perform all respective obligations under the Implementation Plan with a view to ensuring that the Supplier is in a position to provide the Services on and following the Service Commencement Date; and

5.4.2.1 such plan shall be maintained and updated on a monthly basis (or as otherwise specified by the Customer) by the Supplier and progress, or otherwise, towards

successful implementation reported to the Customer.

- 5.2.5 The Customer shall have the right, at any time, to review the documentation produced by the Supplier and to request amendments to ensure effective service delivery.
- 5.2.6 If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.
- 5.2.7 The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 5.2.8 The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date.
- 5.2.9 Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 5.2.10 If a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Customer provides the Supplier with a Satisfaction Certificate (set out in Schedule 4).
- 5.2.11 No payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this paragraph 5.1 of this Order or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Delay Payments.

5.3 Implementation and Implementation

- 5.3.1 From the Commencement Date the Supplier shall perform the Implementation services referred to at 5.1 in order to ensure that the Supplier is ready to perform Services pursuant to subsequent Orders.
- 5.3.2 The Implementation services shall be divided into a number of discrete obligations referred to as Implementation Milestones and which are specified in the Draft Implementation Plan.
- 5.3.3 The dates by which the Implementation Milestones shall be performed are as specified in the Draft Implementation Plan and shall be referred to as the Due Dates.
- 5.3.4 Each Implementation Milestone shall be performed by the Due Date.
- 5.3.5 The Supplier shall notify the Customer immediately upon becoming aware of any delay or likely delay which might cause the Supplier to fail to perform an Implementation Milestone by the Due Date. In these circumstances, without prejudice to the Customer's rights and

remedies, the Customer shall consider, in consultation with the Supplier what steps (if any) might be taken to remedy the situation.

5.3.6 The Supplier shall perform any part of a Implementation Milestone that has not been performed by the Due Date and improve the quality of or replace any work done in connection with a Implementation Milestone that does not meet with the reasonable satisfaction of the Customer by implementing the Business Continuity Plan and any appropriate contingencies and counter-measures in the Implementation Plan or otherwise.

5.3.7 Acceptance or otherwise of the Supplier's performance of an Implementation Milestone shall be determined in accordance with the provisions of this clause:

5.3.7.1 upon performance of a Implementation Milestone by the Supplier, the Customer shall undertake a test and review process to determine whether the Implementation Milestone complies with the service requirements ("**Milestone Tests**"). If in the Customer's opinion the Service Milestone fails the Milestone Tests the Supplier shall promptly, and in any event within one (1) Working Days of notice from the Customer, remedy such failure ("**Remedy Process**") and resubmit the Service Milestone to the Customer for testing. At commencement of the Remedy Process the Supplier shall provide the Customer with full details of the remedies to be implemented and the timetable for implementation ("**Remedy Plan**"). For the purposes of this Contract, the Supplier shall implement the Customer's reasonable recommendations in connection with the Remedy Plan;

5.3.7.2 the cycle of submission to Milestone Tests and testing shall be repeated until Acceptance or Rejection which shall have the following meaning:

i) "**Acceptance**" means the Customer's written notification to the Supplier that a Implementation Milestone complies with the service requirements set out in Schedule 12, Services Specification, to this Contract. For the avoidance of doubt, no other conduct by the Customer (including making payments) shall constitute Acceptance;

ii) "**Rejection**" means the Customer's notification to the Supplier that the Implementation Milestone has not complied with the service requirements set out in Schedule 12, Services Specification to this Contract;

5.3.7.3 if a Implementation Milestone fails three cycles of Milestone Tests, the Supplier shall be in material breach of this Contract and the Customer shall, in its sole discretion, be entitled to exercise its rights of Rejection;

5.3.7.4 in the event of a Rejection of an Implementation Milestone:

i) the Customer shall not be obliged to make any payment instalment associated with such Implementation Milestone;

ii) the Supplier shall refund all amounts paid by the Customer to the Supplier under this Contract and any prior obligation of the Customer to make payments to the Supplier shall be extinguished; and

iii) without prejudice to the Customer's other rights and remedies, the Customer may terminate this Contract;

- 5.3.7.5 in the event of Rejection, the Customer shall be entitled, in addition to its other rights under this Contract or in law to use the materials and/or deliverables created by the Supplier pursuant to this Agreement in order to perform or procure from a third party completion of the Implementation Milestone;
- 5.3.7.6 the terms of this clause regarding performance by the Supplier of its obligations are without prejudice to the Supplier's duty to remedy as soon as is practicable all defects of which the Supplier is aware prior to the Due Date or of which it becomes aware subsequent to the Due Date but before it receives a list of work to be carried out.

(5.2) Testing

As set out in Schedule 4, the Supplier will be required to incorporate Testing of systems and processes into their Implementation Plan as may be applicable.

(5.3) Service Levels and Service Credits

Service Levels:

Set out in; Schedule 12, Services Specification, A 5.10 and Appendix H

Service Credits:

Set out in; Schedule 12, Services Specification, Appendix H

(5.4) Critical Service Failure

Where implementation of the Business Continuity and Disaster Recovery Plan does not restore service provision then this will be considered a critical service failure as defined in respect of Clause 25.13

(5.5) Monitoring

Set out in; Schedule 12, Services Specification, A5, Contract Support Requirements

(5.6) Continuous Improvement, Value for Money and Benchmarking

- 5.6.1 Further to the Framework Schedule 7, the Supplier shall regularly benchmark the Contract Charges and performance of the Services, against other suppliers providing services substantially the same as the Services during the Contract Period in order to compare the Contract Charges and level of performance of the Services with charges and services offered by third parties so as to provide the Customer with information for comparison purposes.
- 5.6.2 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in paragraph 5.6.1 above.
- 5.6.3 The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Services to the Authority and other Contracting Bodies.
- 5.6.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking referred to in this

paragraph 5.6, such information requirements to be at the discretion of the Customer.

6. CUSTOMER RESPONSIBILITIES

(6.1) Customer's Responsibilities

The Customer's Responsibilities are as detailed in Schedule 12, Services Specification.

(6.2) Customer's equipment

Any Customer equipment to be used in the provision of the service is as detailed in Schedule 12, Services Specification.

7. CHARGES AND PAYMENT

(7.1) Contract Charges payable by the Customer:

Contract Charges as set out in Schedule 13.

All charges are excluding VAT

(7.2) Invoicing and Payment

The Supplier shall issue invoices Weekly in arrears. The Customer shall pay the Supplier within thirty (30) calendar days of receipt of a Valid Invoice, submitted in accordance with this paragraph 7.2, the payment profile set out in paragraph 7.1 above and the provisions of the Contract.

8. LIABILITY

Subject to the provisions of Clause 24.1 of the Call-Off Contract, the following Conditions will apply.

8 LIABILITY

8.1 Neither Party excludes or limits its liability for:

- 8.1.1 death or personal injury caused by its negligence, or that of its Staff;
- 8.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
- 8.1.3 breach of any obligations as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Services Act 1982; or
- 8.1.4 any claim for breach of confidentiality, loss of data or Intellectual Property Rights infringement; or
- 8.1.5 wilful breach or abandonment of an Order or the Framework Agreement; or
- 8.1.6 any other liability that cannot by law be excluded or limited.

- 8.2 Subject always to clause 8.1 the liability of either Party for Defaults shall be subject to the following financial limits:
- 8.2.1 the liability of the Provider for each Default causing the loss of Test Materials shall be limited to the provisions of the service credit regime set out in Schedule 12, Services Specification, Appendix H, Key Performance Indicators, except that in addition, if the integrity of Test Materials has been compromised in the reasonable opinion of the Authority, the Provider shall:
- 8.2.1.1 collect any compromised Test Materials delivered by the Provider under the terms of this Agreement from the delivery addresses and either destroy them or deliver them to the Authority (or its nominated holding address) as may be instructed by the Authority; and
- 8.2.1.2 re-perform the Services and re-deliver replacement Test Materials to the original delivery addresses free of charge;
- 8.2.2 the aggregate liability of the Provider for all Defaults (other than the loss of Test Materials provided for under paragraph 8.2.1 above) resulting in loss of or damage to the Authority under or in connection with this Framework Agreement and any Order shall be limited to the sums paid or payable by the Authority to the Provider under the Framework Agreement and any Order in the twelve (12) months in which the liability arises;
- 8.2.3 the liability of the Provider for damage to tangible property (which, for the avoidance of doubt, shall not include Test Materials) shall be limited to five million pounds (£5,000,000) per event or series of connected events; and
- 8.2.4 the aggregate liability under the Framework Agreement or any Order of the Authority for all other Defaults shall in no event exceed the sums paid or payable by the Authority to the Provider under the Framework Agreement and any Order in the twelve (12) months in which the liability arises.
- 8.3 Subject to clause 8.1, in no event shall either Party be liable to the other for any:
- 8.3.1 loss of profits;
- 8.3.2 loss of business;
- 8.3.3 loss of revenue;
- 8.3.4 loss of savings (whether anticipated or otherwise); and/or
- 8.3.5 any indirect or consequential loss or damage.
- 8.4 Nothing in Order shall impose any liability on the Authority in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Provider that may arise by virtue of either a breach of the Order or by negligence on the part of the Authority, or the Authority's employees, servants or agents.

9. INSURANCE

(9.1) Minimum Insurance Period

six (6) Years following the expiration or earlier termination of the Contract.

(9.2) To comply with its obligations under Clause 24.2 and as a minimum, where requested by the Customer in writing the Supplier shall ensure that:

- (i) **professional indemnity insurance** (Not Applicable)
- (ii) **public liability insurance** adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of two million pounds sterling (£2,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time; and
- (iii) **employers' liability insurance** with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as required by Law from time to time.

10. TERMINATION

(10.1) Undisputed Sums Time Period

At least ninety (90) Working Days of the date of the written notice specified in Clause 25.4.3.

(10.2) Termination Without Cause

At least three (3) Months in accordance with Clause 25.5.

11. CONFIDENTIAL INFORMATION

The information provided by the Supplier in response to the Category Requirements Questionnaire, Question 1.2 as set out in Schedule 13, Supplier Solution, shall be deemed Commercially Sensitive Information or Confidential Information:

12. AUDIT AND ACCESS

Seven (7) Years after the expiry of the Contract Period or following termination of the Contract.

13. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

(13.1) Supplemental requirements in addition to the Call-Off Terms

As contained in this Order Form and Order Form Schedules

(13.2) Variations to the Call-Off Terms

As contained in this Order Form and Order Form Schedules

(13.3) Alternative and/or Additional Clauses

As contained in this Order Form and Order Form Schedules

14. FORMATION OF CONTRACT

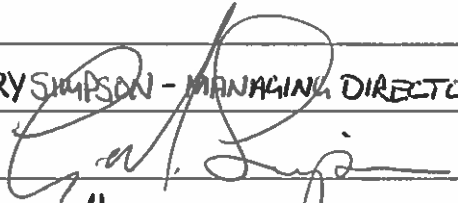
14.1 The Customer shall enter into a Contract by sending this Order Form to the Supplier for the provision of the Services referred to in the Order Form.

14.2 The Supplier shall enter into the Contract by returning a signed copy of the Order Form to the Customer.

14.3 The Contract shall be formed when the Customer acknowledges the receipt of the signed copy of the Order Form.

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide the Services. The Parties hereby acknowledge and agree that they have read the Call-off Terms and the Order Form and by signing below agree to be bound by the terms of this Contract.

For and on behalf of the Supplier:

Name and Title	GARY SIMPSON - MANAGING DIRECTOR
Signature	
Date	27 th OCTOBER 2016.

For and on behalf of the Customer:

Name and Title	A-J BALFOUR - Deputy Director
Signature	A-J Balfour
Date	1/11/16

Part 2 - Call-Off Terms

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Call-Off Terms

1. GENERAL PROVISIONS

1.1 Definitions

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

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with paragraph 5.1 of the Order Form and "Achieved" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	means 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;
"Affiliates"	means 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 of that body corporate from time to time;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Assigned Software Terms"	means the terms set out in Schedule 7 paragraph 5 that shall apply to all elements of Bronze Software;
"Assigned Software"	means software identified as such in paragraph 4 of the Order Form;
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
"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"	means any plan relating to business continuity and disaster recovery as referred to in paragraph 2.6 of the

	Order Form;
"Bronze Licence Terms"	means the terms set out in Schedule 7 paragraph 1 that shall apply to all elements of Bronze Software;
"Bronze Software"	means software identified as such in paragraph 4 of the Order Form;
"Business Continuity Plan"	has the meaning set out in paragraph 1.2.2 of Schedule 5 (Disaster Recovery and Business Continuity);
"Call-Off Terms"	means these terms and conditions in respect of the provision of the Services, together with the Schedules hereto;
"Call-Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Ordering Procedure) of the Framework Agreement;
"Change in Law"	means any change in Law or policy which impacts on the supply of the Services and performance of the Call-Off Terms which comes into force after the Commencement Date;
"Clearance"	means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;
"Commencement Date"	means the date set out in paragraph 1.1 of the Order Form;
"Commercially Sensitive Information"	means the Confidential information listed in paragraph 11 of the Order Form (if any) comprising of a commercially sensitive information: relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
"Continuous Improvement Plan"	means a plan for improving the provision of Services and/or reducing the charges produced by the Supplier pursuant to Schedule 7 of the Framework Agreement;
"Contract"	means the written agreement between the Customer and the Supplier consisting of the Order Form and the

	Call-Off Terms save that for the purposes of Clause 1.2.11 only, reference to Contract shall not include the Order Form;
"Contracting Body"	means the Authority and any other person as listed in paragraph VI.3 of the OJEU Notice;
"Contract Period"	means the period from the Commencement Date to: (a) the Expiry Date; or (b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;
"Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in paragraph 7.1 of the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Service Credits;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"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.);
"COTS Licence Terms"	means the terms set out in Schedule 7 paragraph 4 that shall apply to all elements of COTS Software;
"COTS Software"	means software identified as such in paragraph 4 of the Order Form;
"Critical Service Failure"	shall have the meaning given in paragraph 5.4 of the Order Form;

"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Customer"	means the customer(s) identified in the Order Form;
"Customer Data"	means: (a) 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: (i) are supplied to the Supplier by or on behalf of the Customer; or (ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Customer is the Data Controller;
"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 Premises"	means the premises identified in paragraph 2.3 of the Order Form and which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in paragraph 6.1 of the Order Form;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to the Contract;
"Customer Software"	means software which is owned by or licensed to the Customer, including Assigned Software and software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software;

"Customer 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 this Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;
"Customer's Confidential Information"	means all 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;
"Data Controller"	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
"Default"	means any breach of the obligations of the Supplier (including but not limited to a fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier or the Supplier's Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer;
"Delay Payments"	means payments detailed in paragraph 5.1 of the Order Form;
"Deliverables"	means those deliverables listed in paragraph 2.1 of the Order Form (if any);
"Delivery"	means the time at which the Services have been installed by the Supplier and the Customer has issued a Satisfaction Certificate in respect thereof

	and "Deliver" and "Delivered" shall be construed accordingly;
"Disaster"	shall have the meaning given in paragraph 2.7 of the Order Form;
"Disaster Recovery"	means the process of restoration of the Services by the provision of the Disaster Recovery Services;
"Disaster Recovery Plan"	has the meaning set out in paragraph 1.2.3 of Schedule 5 (Disaster Recovery and Business Continuity);
"Disaster Recovery Services"	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to Schedule 5 (Disaster Recovery and Business Continuity);
"Disaster Recovery System"	means the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Clause 49.2;
"Documentation"	means the technical specifications, user manuals, operating manuals, operating manuals, process definitions and procedures and other documentation including designs relating to the Supplier Software;
"Employee Liabilities"	means all claims actions, proceedings, orders, demands, complaints, investigations 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 including in relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments, (b) unlawful deduction of wages; (c) unfair, wrongful or constructive dismissal compensation; (d) compensation claims for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay; (e) compensation for less favourable treatment of

	part-time workers;
	(f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
	(g) claims whether in tort, contract or statute or otherwise;
	(h) any investigation 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);
"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;
"Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract;
"ERG"	means the Cabinet Office Efficiency and Reform Group;
"Exit Plan"	has the meaning set out in Clause 5.7;
"Expiry Date"	means the date set out in paragraph 1.2 of the Order Form;
"Fair Deal Employee"	means (a) the Transferring Customer Employees and (b) those Former Supplier Employees whose period of continuous employment commenced with and who originally transferred from employment with central or local government or a public sector employer pursuant to a Relevant Transfer under TUPE (or the predecessor legislation to TUPE), and who remain in employment relating to the provision of services to which that Relevant Transfer applied;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that 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;

"Force Majeure"

means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of government, local government or Regulatory Bodies;
- d) fire, flood or any disaster;
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - (i) any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and
 - (ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

"Framework Agreement"

means the framework agreement between the Authority and the Supplier referred to in the Order Form;

"Framework Price(s)"

means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Charging Structure);

"Fraud"

means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Body or the Customer;

"General Principles"

has the meaning set out in paragraph 1.2.1 of Schedule 5 (Disaster Recovery and Business

	Continuity);
"Gold Licence Terms"	means the terms set out in Schedule 7 paragraph 3 that shall apply to all elements of Gold Software;
"Gold Software"	means software identified as such in paragraph 4 of the Order Form together with all other software which is not listed in paragraph 4 of the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector;
"Guarantee"	means the deed of guarantee set out in Schedule 3;
"Guarantor"	means the Supplier's parent company identified in the Order Form (if any);
"Holding Company"	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
"HMRC"	means Her Majesty's Revenue and Customs;
"ICT"	means information and communications technology;
"ICT Environment"	means the Customer System and the Supplier System;
"Implementation Plan"	means the plan referred to in paragraph 5.1 of the Order Form;
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights" or "IPRs"	means (a) patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website

	addresses, trade or business names, rights in Know-How and moral rights and other similar rights or obligations whether registerable or not;
	(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
	(c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
"ITT Response"	means the response submitted by the Supplier to the Invitation to Tender issued by the Authority on 12/09/2012 and annexed to this agreement at Annex A;
"Key Personnel"	means the individuals (if any) identified in paragraph 3.2 of the Order Form;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;
"List x"	means, in relation to a Sub-Contractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Sub-Contractor undertaking work on its premises marked as "CONFIDENTIAL" or above;
"Management Information"	means the management information specified in Framework Schedule 8 (Management Information);
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired

effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Material Breach"

means a material breach of this Contract and/or, breach by the Supplier of any of the following Clauses: Clause 8 (Monitoring of Contract Performance), Clause 9 (Continuous Improvement), Clause 22.5 (Protection of Personal Data), Clause 22.7 (Official Secrets Acts 1911 to 1989), Clause 23 (Warranties and Representations), Clause 30 (Prevention of Bribery and Corruption), Clause 31 (Records and Audits Access), Clause 32 (Discrimination), Clause 33 (Prevention of Fraud), Clause 34 (Transfer and Sub-Contracting), shall be a material breach.

"Milestone"

means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;

"Milestone Date"

means the date set against the relevant Milestone in the Implementation Plan;

"Minimum Insurance Period"

has the meaning given in paragraph 9.1 of the Order Form;

"Ministry of Justice Guidance"

means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>;

"Month"

means a calendar month and **"Monthly"** shall be interpreted accordingly;

"Order"

means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement;

"Order Form"

means the form containing details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;

"Parent Company"

means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term **"Holding or Parent Company"** shall have the meaning ascribed by the Companies Act 2006 or any

	statutory re-enactment or amendment thereto;
"Party"	means the Supplier or the Customer and "Parties" shall mean both of them;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Premises"	means the location where the Services are to be provided as set out in paragraph 2.3 of the Order Form;
"Process"	has the meaning given to "processing" under the Data Protection Act 1998 (but shall include both manual and automatic processing) , and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	means: 1) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to: a) induce that person to perform improperly a relevant function or activity; or b) reward that person for improper performance of a relevant function or activity; or 2) committing any offence: a) under the Bribery Act 2010; or b) under legislation creating offences concerning fraudulent acts; or c) at common law concerning fraudulent acts relating to this Call-Off Agreement or any other contract with the Authority and/or Customer and/or any other Contracting Body; or d) defrauding, attempting to defraud or conspiring to defraud the Authority and/or the Customer or any other Contracting Body.
"Project Specific IPRs"	means: (a) IPRs in the Services, Deliverables provided by the Supplier (or by a third party on behalf

	of the Supplier) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or
	(b) IPRs arising as a result of the provision of the Services and the Deliverables by the Supplier (or by a third party on behalf of the Supplier) under the Contract,
	including the rights in or to any database developed and supplied by the Supplier to the Customer in accordance with the terms of this Contract;
"Property"	means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with the Contract;
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in paragraph 2.4 of the Order Form) and any other applicable quality standards, Government codes of practice and guidance;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;
"Related Supplier "	means any person who provides services to the Customer which are related to the Services from time to time;
"Relevant Transfer Date"	means the date upon which the Relevant Transfer takes place;
"Relevant Transfer"	means a transfer of employment to which TUPE applies or is treated as applying;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified in paragraph 3.6 of the Order Form;
"Replacement Supplier"	means any third party service provider of Replacement Services appointed by the Customer

from time to time;

"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
"Request for Information"	means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Review Report"	has the meaning set out in paragraph 6 of Schedule 5 (Disaster Recovery and Business Continuity);
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in the Appendix to Schedule 4 granted by the Customer when the Supplier has Achieved a Milestone;
"Second Generation Fair Deal Employee"	means any employee whose employment transfers under a Relevant Transfer from the Former Supplier to the Supplier on the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of Civil Service pension scheme immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Supplier, and (ii) had elected to transfer such pension rights from Civil Service pension scheme to the Former Supplier's Scheme;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 3 of Schedule 2 an outline of which is set out in paragraph 2.5 of the Order Form as updated from time to time;
"Security Policy"	means the Customer's security policy set out in paragraph 2.5 of the Order Form, as updated from time to time;
"Service Credits"	means the sums referred to in paragraph 5.3 of the Order Form as being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;

"Service Levels"	means any service levels applicable to the provision of the Services as referred to in paragraph 5.3 of the Order Form;
"Services"	means the services to be supplied as referred to in paragraph 2.1 of the Order Form;
"Silver Licence Terms"	means the terms set out in Schedule 7 paragraph 2 that shall apply to all elements of Silver Software;
"Silver Software"	means software identified as such in paragraph 4 of the Order Form;
"Sites"	means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services or where any part of the Supplier System is situated or where any physical interface with the Customer System takes place;
"Software"	means the Supplier Software and Customer Software;
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;
"Staff"	means all persons employed by the Supplier and/or any Sub-Contractor to perform its 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 its obligations under the Contract;
"Staffing Information"	means written information about each of the Supplier or its Sub-Contractor's Staff including in particular: the percentage of working time spent by each of them in the provision of the services; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) Years, details of any grievances raised by any of them in the preceding two (2) Years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) Years, any potential proceedings which the Supplier or its Sub-Contractor reasonably considers may be raised by any of them, and

		information about any of them who have been absent from work for one (1) Month or more regardless of the reason at the time the staffing information is requested;
"Staff Vetting Procedures"		means the Customer's procedures and departmental policies for the vetting of personnel as set out in paragraph 2.8 of the Order Form;
"Sub-Contract"		means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-Contractor"		means the third party with whom the Supplier enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
"Supplier"		means the person, firm or company with whom the Customer enters into the Contract as identified in the Order Form;
"Supplier IPR"	Pre-Existing	shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer 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;
"Supplier's Proposals"		has the meaning set out in paragraph 7.3.3 of Schedule 5 (Disaster Recovery and Business Continuity);
"Supplier Software"		means the Gold Software, Silver Software, Bronze Software and COTS Software;
"Supplier Solution"		means the Supplier's solution for the provision of the Services as referred to in paragraph 3.1 of the Order Form;
"Supplier System"		means the information and communications technology system used by the Supplier in performing the Services including the Software, the Equipment and related cabling (but excluding the Customer System);
"Supplier's Confidential"		means any information, however it is conveyed, that relates to the business, affairs, developments, trade

Information"	secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential,;
"Technical Standards"	means the technical standards set out in paragraph 2.4 of the Order Form;
"Tender"	means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Services pursuant to the Framework Agreement;
"Tests" and "Testing"	means any tests required to be carried out pursuant to this Contract as set out in the Test Plan and in paragraph 5.2 of the Order Form;
"Test Issue"	means any variance or non-conformity of Services or Deliverables from its requirements as set out in the Contract;
"Test Plan"	means a plan for the Testing of the Services or Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of Schedule 4;
"Test Strategy"	means a strategy for the conduct of Testing as described further in paragraph 3 of Schedule 4;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
"Transferring Supplier Employees"	means those employees of the Supplier to which TUPE will apply on the Service Transfer Date, and in respect of whom written notification has been given by the Supplier to the Customer before the Service Transfer Date;
"Transferring Customer Employees"	means those employees of the Customer to which TUPE will apply on the Relevant Transfer Date, and in respect of whom written notification has been given by the Customer to the Supplier before the Relevant Transfer Date;
"Undelivered Services"	shall have the meaning given in Clause 5.1.3;
"Undisputed Sums Time Period"	has the meaning given in paragraph 10.1 of the Order Form;

"Use"	means: (a) with respect to Bronze Software, Silver Software and COTS Software, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that software; and (b) with respect to the Gold Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that software;]
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with Clause 13.2.2;
"Variation"	has the meaning given to it in Clause 39.1;
"Variation Procedure"	means the procedure set out in Clause 39;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales; and
"Year"	means a calendar year.

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 Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules;
- 1.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 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" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11 without prejudice to clause 12.3 of the Framework Agreement, which shall have effect as regards the Authority and the Supplier, in the event of and only to the extent of any conflict between the Order Form, the Clauses of the Contract, any document referred to in the Clauses of the Contract and the Framework Agreement, the conflict shall, for the purposes of this Contract and as regards the Customer and the Supplier, be resolved in accordance with the following order of precedence:
- 1.2.11.1 the Clauses of the Contract;
 - 1.2.11.2 the Order Form; and
 - 1.2.11.3 any other document referred to in the Clauses of the Contract.
 - 1.2.11.4 the Framework Agreement;

2. DUE DILIGENCE

2.1 The Supplier acknowledges that it:

- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and

2.1.3 has entered into this Contract in reliance on its own due diligence alone.

3. GUARANTEE

Where the Customer has specified in the Order Form that this Contract shall be conditional upon receipt of a Guarantee from the Guarantor, the Supplier shall deliver to the Customer an executed Guarantee substantially in the form set out in Schedule 3 from the Guarantor, on or prior to the Commencement Date.

4. CONTRACT PERIOD

4.1 This Contract shall take effect on the Commencement Date and shall either expire on:

4.1.1 the date specified in the Order Form; or

4.1.2 a maximum of 4 Years after the Commencement Date.

whichever is the earlier, unless terminated earlier pursuant to Clause 25.

4.2 For the purposes of this Contract, the initial period, and any extensions thereof, shall be referred to as the "Term".

5. SUPPLY OF SERVICES

5.1 Implementation of the Services

5.1.1 The Supplier shall provide the Services in accordance with the Implementation Plan and Milestones (if any).

5.1.2 Where the Services are to be carried out in accordance with the Implementation Plan and Milestones then the Parties agree to carry out their respective obligations set out in Schedule 4 (Testing).

5.1.3 In the event that not all of the Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("**Undelivered Services**") then the Customer shall be entitled to withhold payment of the Contract Charges for any Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Services are Delivered.

5.1.4 Unless otherwise agreed, time of delivery in relation to implementing, commencing and/or supplying of the Services shall be of the essence and if the Supplier fails to provide the Services within the time specified in accordance with Clause 5.1.1 and paragraph 5.1 of the Order Form (and without prior Approval), the Customer may release itself from any obligation to accept and pay for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer under this Contract.

5.2 On-going Supply of the Services

- 5.2.1 The Supplier shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Charges. The Customer may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.
- 5.2.2 Time in relation to the on-going supply of the Services shall be of the essence.
- 5.2.3 Except where otherwise provided in the Contract, the Services provided by the Staff or the Sub-Contractors shall be at such place or places as set out in paragraph 2.3 of the Order Form.
- 5.2.4 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 5.2.5 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Services and the performance of its obligations under the Contract.

5.3 Provision and Removal of Equipment

- 5.3.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 5.3.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining the Approval.
- 5.3.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 5.3.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

5.3.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

5.3.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and

5.3.5.2 replace such item with a suitable substitute item of Equipment.

5.3.6 Upon termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

5.4 Quality

5.4.1 The Supplier shall at all times comply with the Technical Standards and the Quality Standards, standards provisions of Schedule 10 and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard to which the Services must be provided has not been specified in the Contract, the Supplier shall agree the relevant standard for the provision of the Services with the Customer prior to the supply of the Services commencing and in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

5.4.2 The Supplier shall ensure that the Staff shall at all times during the Contract Period:

5.4.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Services;

5.4.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer; and

5.4.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.

5.4.3 The Supplier shall without prejudice to Clause 5.2.4 perform its obligations under the Contract in a timely manner.

5.4.4 The Supplier shall supply the Services and in accordance with the specification in the Framework Agreement, the Order Form and in accordance with all applicable Laws.

5.4.5 The Supplier shall at all times during the Contract Period ensure that:

5.4.5.1 the Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;

- 5.4.5.2 the Services operate in accordance with the relevant technical specifications and correspond with all requirements and standards as set out in the Order Form and Schedule 10;
- 5.4.5.3 the Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
- 5.4.5.4 the Services are supplied in accordance with the Supplier Solution.

5.5 Testing

The Parties shall carry out their obligations set out in Schedule 4.

5.6 Service Levels

- 5.6.1 The Supplier shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of Schedule 6 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Supplier.
- 5.6.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

5.7 Exit Planning

The Supplier shall, within three (3) Months after the Commencement Date, deliver to the Customer a plan (the "Exit Plan") which sets out the Supplier's proposed methodology for achieving orderly transition of the provision of the Services from the Supplier to the Customer and/or the Replacement Supplier on the expiry or termination of this Contract. Within thirty (30) Working Days after submission of the draft Exit Plan (or any revised Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure. The Supplier will review and update the Exit Plan within one (1) Month of each anniversary of the Commencement Date and shall comply with the exit planning provisions as set out in Schedule 8.

6. ASSISTANCE ON EXPIRY OR TERMINATION

In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Plan Schedule 8.

7. DISASTER RECOVERY AND BUSINESS CONTINUITY

The Parties shall comply with the provisions of Schedule 5 (Disaster Recovery and Business Continuity).

8. MONITORING OF CONTRACT PERFORMANCE

- 8.1 The Supplier shall comply with the monitoring arrangements referred to in paragraph 5.5 of the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.
- 8.2 Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form set out in the Management Information Schedule 8 of the Framework Agreement (as amended from time to time) on such date during the Contract Period as specified in paragraph 5.5 of the Order Form.

9. CONTINUOUS IMPROVEMENT

- 9.1 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services pursuant to which it will regularly review with the Customer the Services and the manner in which it is providing the Services with a view to reducing the Customer's costs (including the Contract Charges) and/or improving the quality and efficiency of the Services and to comply with any specific provisions in accordance with the provisions referred to in paragraph 5.6 of the Order Form.
- 9.2 Any amendments to the Services and/or the Contract Charges, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with Clause 9.1, shall be implemented by the Supplier (subject to compliance with EU procurement Law and the Framework Agreement) and the Supplier shall implement such variation amendment or improvement at no additional cost to the Customer.
- 9.3 The Supplier shall ensure that the information that it provides to the Customer in accordance with Clause 9.1 shall be sufficient for the Customer to decide whether any improvement to the Services should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services identified by the Supplier.
- 9.4 Notwithstanding the Supplier's obligations under Clause 9.1 to 9.3 above, the Customer shall be entitled to regularly benchmark the Contract Charges and performance of the Services, against other suppliers providing services substantially the same as the Services during the Contract Period in order to compare the Contract Charges and level of performance of the Services with charges and services offered by third parties so as to provide the Customer with information for comparison purposes.
- 9.5 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 9.4 above.
- 9.6 The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Services carried out under Clause 9.4 to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 9.7 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking in

accordance with Clause 9.4 and such information requirements shall be at the discretion of the Customer.

- 9.8 Where, as a consequence of any benchmarking carried out by the Customer under Clause 9.4, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Contract Variation procedures set out in Clause 39.
- 9.9 The benefit of any work carried out by the Supplier to improve or update the Services or to facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Contract Charges or the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 7 (Value for Money), shall be implemented by the Supplier (subject to EU procurement Law and the Framework Agreement) at no additional cost to the Customer.

10. DISRUPTION

- 10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Contract.
- 10.3 In the event of industrial action by the Supplier's Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 10.4 If the Supplier's proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer, by notice in writing.
- 10.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.]

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

- 11.1 Without prejudice to any other right or remedy which the Customer may have, if any 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 Services have been Delivered) do any of the following:
- 11.1.1 at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the 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 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;

- 11.1.2 if paragraph 5.1 of the Order Form provides for the payment of Delay Payments, then the Supplier shall pay such amounts (calculated in accordance with paragraph 5.1 of the Order Form) 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;
- 11.1.3 carry out, at the Supplier's expense, any work necessary to make the Services comply with the Contract;
- 11.1.4 without terminating the Contract, itself supply or procure the supply of all or part of the 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 Services in accordance with the Contract;
- 11.1.5 without terminating the whole of the Contract, terminate the Contract in respect of part of the 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 Services; and/or
- 11.1.6 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 Services.

11.2 In the event that the Supplier:

- 11.2.1 fails to comply with Clause 5.1.4 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

- 11.2.2 persistently fails to comply with Clause 5.1.4,

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

12. PREMISES

12.1 Inspection of Premises

- 12.1.1 The Supplier acknowledges that it has inspected the Customer's Premises and has advised the Customer of any aspect of the Customer's Premises that is not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Customer's

Premises, together with a timetable for and the costs of those actions, have been specified in paragraph 3.8 of the Order Form.

- 12.1.2 If the Supplier has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions in accordance with Clause 12.1.1 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Customer's Premises except in respect of any latent structural defect in the Customer's Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Customer's Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval
- 12.1.3 Any disputes relating to due diligence as set out in Clause 2 or this Clause 12 shall be resolved in accordance with the Dispute Resolution Procedure.

12.2 Licence to occupy Premises

- 12.2.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract.
- 12.2.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 12.2.3 Save in relation to such actions identified by the Supplier in accordance Clause 12.1.1 and set out in paragraph 3.8 of the Order Form, should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 12.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 12.2.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 12.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its

Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

12.3 Property

- 12.3.1 Where the Customer issues Property free of charge to the Supplier such Property shall be and remain the Property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.
- 12.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 12.3.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval
- 12.3.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 12.3.5 The Supplier shall be liable for all loss of, or damage to the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.

13. PAYMENT AND CONTRACT CHARGES

13.1 Contract Charges

- 13.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with Clause 13.2 (Payment and VAT).
- 13.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

- 13.1.3 If at any time during the Contract Period the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Contract Charges for such Services under this Contract by the same amount.
- 13.1.4 The benefit of any work being done pursuant to the provisions of Schedule 7 (Value for Money) of the Framework Agreement which is specifically commissioned from the Supplier by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Services or to facilitate their delivery shall be offered by the Supplier to the Customer at no charge.

13.2 Payment and VAT

- 13.2.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within the time period specified in paragraphs 7.1 and 7.2 of the Order Form.
- 13.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 13.2.3 Where the Supplier enters into a Sub-Contract 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.
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- 13.2.4 The Supplier shall add VAT to the Contract Charges at the prevailing rate as applicable.
- 13.2.5 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 13.2.5 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.
- 13.2.6 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under Clause 25.4 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.2.7 The Supplier shall accept the Government Procurement Card as a means of payment for the 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.

13.3 Recovery of Sums Due

- 13.3.1 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 or under any other agreement or contract with the Customer.
- 13.3.2 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.
- 13.3.3 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.
- 13.3.4 All payments due shall be made in accordance to timelines as set out in paragraph 7.2 of the Order Form unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

13.4 Euro

- 13.4.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 13.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 13.4.1 by the Supplier.

14. KEY PERSONNEL

- 14.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.
- 14.2 The Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 14.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.
- 14.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully

competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 14.5 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

15. SUPPLIER'S STAFF

- 15.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

15.1.1 any member of the Staff; or

15.1.2 any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

- 15.2 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.

- 15.3 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.

- 15.4 If the Supplier fails to comply with Clause 15.2 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.

- 15.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 15.2 shall be final and conclusive.

Relevant Convictions

- 15.6 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 Criminal Records Bureau procedures or otherwise), is employed or engaged in any part of the provision of the Services without Approval.

- 15.7 For each member of Staff who, in providing the 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):

15.7.1 carry out a check with the records held by DfE;

15.7.2 conduct thorough questioning regarding any Relevant Convictions; and

15.7.3 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau,

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.]

16. TUPE

16.1 The Customer shall, based upon a reasonable assessment of the facts, stated in paragraph 3.3 of the Order Form which TUPE wording as set out in Parts A, B and C (Parts A and B may both apply) of this Clause 16 will apply to the Contract.

- *Part A will not apply for this call off as the Customer itself does not currently carry out the Services and is not being replaced with a Supplier.*
- *Part B may apply as the Customer currently engages a third party to provide the Services and may replace such third party with a new Supplier.*
- *Part C will not apply to this Call Off as no Customer employee will be subject to TUPE and TUPE is not intended to apply at Commencement.*

PART A (NOT APPLICABLE)

16.2 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will be a "Relevant Transfer" to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Transferring Customer Employee.

16.3 The Customer will perform and discharge all its obligations in respect of all the Transferring Customer Employees prior to the Relevant Transfer Date including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.

16.4 The Supplier shall comply with all of its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Customer Employees from and after the Relevant Transfer Date. The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier's failure to comply with all of its obligations under TUPE and/or perform and discharge any such obligation.

16.5 The Customer will indemnify the Supplier against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of:

- 16.5.1 any act or omission by the Customer relating to a Transferring Customer Employee occurring on or before the Relevant Transfer Date or any other

matter, event or circumstance (other than an act or omission of the Supplier or any Sub-Contractor) occurring or having its origin before the Relevant Transfer Date;

- 16.5.2 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for which it is alleged the Supplier may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive; and
 - 16.5.3 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the Supplier's or any Sub-Contractor's failure to comply with Regulation 13(4) of TUPE.
- 16.6 If any person who is not a Transferring Customer Employee claims, or it is determined, that his contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
- 16.6.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
 - 16.6.2 the Customer may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.
- 16.7 If such offer is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall immediately release the person from his employment.
- 16.8 If, after the fifteen (15) Working Day period specified in Clause 16.6.2 has elapsed:
- 16.8.1 no such offer of employment has been made; or
 - 16.8.2 such offer has been made but not accepted; or
 - 16.8.3 the situation has not otherwise been resolved,
- the Supplier may within five (5) Working Days give notice to terminate the employment of such person.
- 16.9 Subject to the Supplier acting in accordance with the provisions of Clauses 16.2 to 16.16 (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will indemnify the Supplier against all Employee Liabilities arising out of termination pursuant to the provisions of Clause 16.7.
- 16.10 If any such person as is described in Clause 16.6 is neither re employed by the Customer nor dismissed by the Supplier within the time scales set out in Clauses 16.2 to 16.16 (inclusive) such person will be treated as a Transferring Customer Employee.
- 16.11 The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier's and any Sub-Contractor's failure to perform and discharge any

obligation and against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Transferring Customer Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Customer Employee.

16.12 The Supplier shall indemnify the Customer against all Employee Liabilities in connection with or arising from any claim made by or in respect of any Transferring Customer Employee (or, where applicable, any trainee or employee representative (as defined in TUPE) of any Transferring Customer Employee) arising out of or in connection with:

16.12.1 any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Relevant Transfer Date or any other matter, event or circumstance occurring or having its origin after the Relevant Transfer Date including any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Customer's failure to comply with its obligations under TUPE;

16.12.2 in relation to the breach or non-observance by the Supplier after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Customer Employee;

16.12.3 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

16.12.3.1 in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and

16.12.3.2 in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.

16.12.4 in relation to his/her employment or its termination arising or occurring after the Relevant Transfer Date;

16.13 The Supplier shall notify the Customer of any claims by any Transferring Customer Employee as soon as practicably possible to allow the Customer to conduct or control the defence to such claims as well as any settlement negotiations and shall

comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.

- 16.14 The Supplier will, and will procure that any Sub-Contractor will, 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 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance and relevant provisions of Schedule 8.
- 16.15 The Customer warrants that the information provided to the Supplier regarding Transferring Customer Employees shall be true and accurate in all material respects.
- 16.16 The Customer agrees that it shall not other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services during the period prior to the Relevant Transfer Date save where legally or contractually obliged to do so:
- 16.16.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
 - 16.16.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
 - 16.16.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 16.16.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees; and
 - 16.16.5 increase or reduce the total number of employees so engaged, replace or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any Transferring Customer Employee save for:
 - 16.16.5.1 the execution of assigned operations as detailed in 16.16.3; and/or
 - 16.16.5.2 replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;

PART B

- 16.17 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will be a "**Relevant Transfer**" to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE,

the contracts of employment between the Former Supplier and the Former Supplier's Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Former Supplier Employee.

- 16.18 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will perform and discharge all its obligations in respect of all the Former Supplier Employees, including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, prior to the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments due to them will be made.
- 16.19 The Supplier shall comply with all of its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Former Supplier Employees including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, from and after the Relevant Transfer Date. The Supplier shall indemnify the Customer for itself and on behalf of the Former Supplier against all Employee Liabilities arising from the Supplier's failure to comply with all of its obligations under TUPE and/or perform and discharge any such obligation in relation to the Former Supplier's Employees.
- 16.20 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will indemnify the Supplier against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Supplier's Employee (or, where applicable, any trainee or employee representative of any Former Supplier's Employees) arising out of or in connection with:
- 16.20.1 any fact or matter concerning or arising from his/her employment, or the termination thereof, on or before the Relevant Transfer Date, including (but not limited to) any claims of unfair dismissal, wrongful dismissal, unlawful deduction, breach of contract, sex discrimination, race discrimination or disability discrimination, or any claim for a redundancy payment;
 - 16.20.2 the breach or non-observance by the Former Supplier during the period prior to the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employees; and
 - 16.20.3 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 16.20.3.1 in relation to any Former Supplier Employees, 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; and

16.20.3.2 in relation to any employee who is not a Former Supplier Employees, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, 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.

16.21 If any person who is not a Former Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Former Supplier to the Supplier pursuant to TUPE or the Acquired Rights Directive then:

16.21.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (which may include notice to a Former Supplier); and

16.21.2 the Former Supplier may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.

16.22 If such offer is accepted, or if the situation has otherwise been resolved by the Former Supplier, the Supplier shall immediately release the person from his employment.

16.23 If, after the fifteen (15) Working Day period specified in Clause 16.21.2 has elapsed:

16.23.1 no such offer of employment has been made; or

16.23.2 such offer has been made but not accepted; or

16.23.3 the situation has not otherwise been resolved,

the Supplier may within five (5) Working Days give notice to terminate the employment of such person.

16.24 Subject to the Supplier acting in accordance with the provisions of Clauses 16.17 to 16.22 (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will indemnify the Supplier against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any employee (or, where applicable, any trainee or employee representative of any employee) in relation to the operation of TUPE upon the contract of employment or upon the employment or termination by the Supplier of the employment of any employee, subject to the provisions of Clause 16.23, who is later alleged or determined to have transferred to the employment of the Supplier pursuant to TUPE.

16.25 If any such person as is described in Clause 16.21 is neither re-employed by the Former Supplier nor dismissed by the Supplier within the time scales set out in Clauses 16.21 to 16.23 (inclusive) such person will be treated as a Former Supplier Employee.

- 16.26 The Supplier shall indemnify the Customer on behalf of the Former Supplier against all Employee Liabilities arising from the Supplier's or any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Former Supplier Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Former Supplier Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Former Supplier Employee.
- 16.27 The Supplier will, and will procure that any Sub-Contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Former Supplier Employee who is a Second Generation Fair Deal Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance and relevant provisions of Schedule 8.
- 16.28 The Supplier shall indemnify the Customer for itself and on behalf of the Former Supplier against all Employee Liabilities (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Supplier Employee (or, where applicable, any trainee or employee representative of any Former Supplier Employee) arising or in connection with:
- 16.28.1 his/her employment or its termination arising or occurring after the Relevant Transfer Date;
 - 16.28.2 a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Former Supplier Employee in respect of the period after the Relevant Transfer Date;
 - 16.28.3 any act or omission by the Supplier or any Sub-Contractor occurring on or after the Relevant Transfer Date;
 - 16.28.4 any claim made by or in respect of a Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Relevant Transfer Date including any claim made by or in respect of a Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 except to the extent that the liability arises from the Customer's or any Former Supplier's failure to comply with their obligations under TUPE;
 - 16.28.5 any statement communicated to or action undertaken by the Supplier to, or in respect of, any Former Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing.

- 16.28.6 the breach or non-observance by the Supplier during the period after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employee;
- 16.28.7 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- 16.28.7.1 in relation to any Former Supplier Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and
- 16.28.7.2 in relation to any employee who is not a Former Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.
- 16.28.8 The Supplier shall notify the Customer of any claims by any Former Supplier's Employee as soon as practicably possible to allow the Customer and the Former Supplier to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.

PART C

- 16.29 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will not be a "Relevant Transfer" to which TUPE will apply in relation to any employees of the Customer. In the circumstances, the Customer and the Supplier agree that no employees of the Customer will transfer to the Supplier by virtue of the operation of TUPE or the Acquired Rights Directive.
- 16.30 If any employee of the Customer claims or it is determined that his contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
- 16.30.1 The Supplier will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Customer;
- 16.30.2 The Customer may offer employment to such person within twenty one (21) Working Days of the notification by the Supplier or take such other steps as it considers appropriate to deal with the matter;
- 16.30.3 If such offer is accepted (or if the situation has otherwise been resolved by the Customer), the Supplier shall immediately release the person from his employment;

- 16.30.4 If after the twenty one (21) Working Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Supplier may within seven (7) Working Days give notice to terminate the employment of such person;
 - 16.30.5 Subject to Clause 16.31 and subject to the Supplier acting in this way or in such other way as may be agreed between the Customer and the Supplier, the Customer will indemnify the Supplier against all Employee Liabilities arising out of such termination provided the Supplier complies with all applicable proper employment procedures.
 - 16.30.6 If such person is neither re employed by the Customer nor dismissed by the Supplier within the time scales set out in this Clause 16.30 such person will be treated as having transferred to the Supplier by virtue of the operation of TUPE and the Supplier shall comply with such obligations as may be imposed upon it under TUPE or otherwise by Law.
- 16.31 The indemnity in Clause 16.30.5 shall only apply where the notification referred to in Clause 16.30.1 is made by the Supplier to the Customer within six (6) Months of the Relevant Transfer Date.

17. PRE-SERVICE TRANSFER OBLIGATIONS

- 17.1 The Supplier agrees that, subject to compliance with the Data Protection Legislation:
- 17.1.1 within twenty (20) Working Days of the earliest of:
 - 17.1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or
 - 17.1.1.2 receipt of the giving of notice of early termination of this Contract or any part thereof; or
 - 17.1.1.3 the date which is twenty four (24) Months before the due expiry date of this Contract,
- it shall provide the Supplier's Provisional Staff List which the Supplier believes will transfer to the Customer or the Replacement Supplier (as the case may be), together with Staffing Information in relation to such employees and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Customer;
- 17.1.2 at least ten (10) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer for itself or on behalf of any Replacement Supplier (as the case may be) a final list of Transferring Supplier Employees which shall transfer under TUPE (the "**Supplier's Final Staff List**"); and
 - 17.1.3 the Customer shall be permitted to use and disclose information provided by the Supplier under Clause 17.1 for informing any Tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services.

- 17.2 The Supplier's Final Staff List will identify which of the Staff named are Transferring Supplier Employees. The provision of personal data regarding those individuals detailed on the Supplier's Final Staff List is subject to the consent of such individuals (which the Supplier will use its reasonable endeavours to obtain) and being mindful that the final 'Personalised List' can change up to the date of transfer or in the absence of such individual's approval, the Supplier's Final Staff List being suitably anonymised so as to comply with the DPA.
- 17.3 The Supplier warrants, for the benefit of the Customer and any Replacement Supplier, that the information provided under Clauses 17.1 and 17.2 of this Contract shall be true and accurate in all material respects.
- 17.4 From the date of the earliest event referred to in Clauses 17.1.1.1 to 17.1.1.3 (inclusive), the Supplier agrees, for the benefit of the Customer and any Replacement Supplier, that it shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
- 17.4.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
 - 17.4.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
 - 17.4.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 17.4.4 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 Staff List; and
 - 17.4.5 increase or reduce the total number of employees so engaged, replace any Staff listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save for:
 - 17.4.5.1 the execution of assigned operations as detailed in 17.4.3; and/or
 - 17.4.5.2 replacing voluntary resignations or Staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;
- 17.5 The Supplier will promptly notify or as appropriate will procure that the Sub-Contractor will promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment given by the Supplier or any Sub-Contractor or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.

- 17.6 During the Contract Period, the Supplier will provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the DPA) including without limitation the Staffing Information and, upon reasonable request by the Customer and subject only to any limitation imposed by the DPA, the Supplier will provide, and will procure that its Sub-Contractors will provide, the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and will allow the Customer or the Replacement Supplier to have copies of any such documents.
- 17.7 Within seven (7) Working Days following the Service Transfer Date, the Supplier will provide to the Customer or any Replacement Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Supplier Employee:
- 17.7.1 the most recent Month's copy pay slip data;
 - 17.7.2 details of cumulative pay for tax and pension purposes;
 - 17.7.3 details of cumulative tax paid;
 - 17.7.4 tax code;
 - 17.7.5 details of any voluntary deductions from pay; and
 - 17.7.6 bank/building society account details for payroll purposes.

18. TUPE EXIT PROVISION

- 18.1 The Customer shall determine whether or not based upon a reasonable assessment of the facts a Service Transfer is a situation to which TUPE and/or the Acquired Rights Directive may apply. In circumstances where it is so reasonably determined, it is agreed the Customer or a Replacement Supplier would inherit liabilities in respect of employees of the Supplier or any Sub-Contractor engaged in the provision of the Services and, accordingly, the provisions in this Clause 18 shall apply.
- 18.2 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Replacement Supplier under a replacement contract will be a "Relevant Transfer" to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Service Transfer Date as if originally made between the Replacement Supplier and each such Transferring Supplier Employee.
- 18.3 The Supplier shall, and shall procure that any Sub-Contractor shall, perform and discharge all its obligations in respect of all the Transferring Supplier Employees up to and including the Service Transfer Date and any necessary apportionments in respect of any periodic payments due to them will be made. The Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against all Employee Liabilities arising from the Supplier's, or any Sub-Contractor's, failure to perform and discharge any such obligation.

- 18.4 The Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against any Employee Liabilities in respect of the Transferring Supplier Employees arising from or as a result of:
- 18.4.1 any act or omission by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date;
 - 18.4.2 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for which it is alleged that the Customer or any Replacement Supplier may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive;
 - 18.4.3 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 of except to the extent that the liability arises from the Customer's or any Replacement Supplier's failure to comply with Regulation 13(4) of TUPE;
 - 18.4.4 any statement communicated to or action undertaken by the Supplier to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing;
 - 18.4.5 in relation to any proposed change by the Supplier in the working conditions or terms of employment of any Transferring Supplier Employees to take effect after the Service Transfer Date (including any claim for constructive dismissal), whether such change is proposed before or after the Service Transfer Date;
 - 18.4.6 a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Supplier Employees in respect of the period on or before the Service Transfer Date;
 - 18.4.7 in respect of any fact or matter concerning or arising from the Transferring Supplier Employees employment, or the termination thereof, on or before the Service Transfer Date including any claim for a redundancy payment;
 - 18.4.8 in relation to the breach or non-observance by the Supplier during the period prior to the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees; and
 - 18.4.9 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary National Insurance contributions:

- 18.4.9.1 in relation to any Transferring Supplier Employees, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Service Transfer Date; and
 - 18.4.9.2 in relation to any employee who is not a Transferring Supplier Employees, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Supplier to the Customer or the Replacement Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Service Transfer Date.
- 18.5 If any person who is not a Transferring Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Supplier or any Sub-Contractor to the Customer or any Replacement Supplier pursuant to TUPE or the Acquired Rights Directive, then:
- 18.5.1 the Customer will and shall use its reasonable endeavours to procure that the Replacement Supplier will, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 18.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Supplier or take such other steps as it considers appropriate to deal with the matter.
- 18.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier, the Customer shall and shall use its reasonable endeavours to procure that the Replacement Supplier shall immediately release the person from his employment.
- 18.7 If, after the fifteen (15) Working Day period specified in Clause 18.5.2 has elapsed:
- 18.7.1 no such offer of employment has been made; or
 - 18.7.2 such offer has been made but not accepted; or
 - 18.7.3 the situation has not otherwise been resolved,
- the Customer may and shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment of such person.
- 18.8 Subject to the Customer or the Replacement Supplier acting in accordance with the provisions of this Clause 18 and in accordance with all applicable proper employment procedures set out in Law, the Supplier shall indemnify the Customer for itself and on behalf of the Replacement Supplier against all Employee Liabilities arising out of termination pursuant to the provisions of Clause 18.7.
- 18.9 If any such person as is described in Clause 18.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Customer or Replacement Supplier within the time scales set out in this Clause 18, such person will be treated as a Transferring Supplier Employee.

- 18.10 The Customer shall indemnify the Supplier against all Employee Liabilities arising from the Customer's, and shall procure that the Replacement Supplier shall indemnify the Supplier against all Employee Liabilities arising from the Replacement Supplier's, failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Supplier Employee arising from or as a result of any act or omission by the Customer or a Replacement Supplier (as appropriate) relating to a Transferring Supplier Employee occurring before, on or after the Service Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Service Transfer Date which would give rise to a substantial change in working conditions of a Transferring Supplier Employee to the material detriment of a Transferring Supplier Employee.
- 18.11 The Customer shall procure that the Replacement Supplier shall indemnify the Supplier against any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or any of its Sub-Contractors in relation to its or their obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its obligations under Regulation 13(4) of TUPE except to the extent that the liability arises from any Supplier's or Supplier Subcontractor's failure to comply with its obligations under TUPE.
- 18.12 The Customer shall indemnify the Supplier against any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Customer in relation to its obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13(4) of TUPE except to the extent that the liability arises from the Supplier's or Supplier Subcontractor's failure to comply with Regulation 13 of TUPE.
- 18.13 If, in the event of a Service Transfer to which TUPE or the Acquired Rights Directive do not apply the following provisions shall apply:
- 18.13.1 the Customer can and shall advise the Replacement Supplier that it can, in its discretion, make to any of the employees identified on the list provided by the Supplier under Clause 18, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the termination referred to in paragraph 5.1 of the Schedule 8 of this Contract.
- 18.13.2 When the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Supplier, which could be without the employee or worker having worked his full notice period, if the employee so requests.
- 18.13.3 If the employee does not accept an offer of employment made by the Customer or Replacement Supplier, or no such offer is made, the employee shall remain employed by the Supplier (or the relevant Sub-Contractor, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Supplier or the relevant Sub-Contractor and the Supplier shall indemnify the Customer for itself and on

behalf of any Replacement Supplier against any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-Contractor.]

19. STAFFING SECURITY

- 19.1 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged in the provision of the Services. The Supplier confirms that all Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 19.2 The Supplier shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Management Plan.
- 19.3 NOT APPLICABLE
- 19.4 Save in respect of the circumstances set out in Clause 19.3 above in the event that it will take longer for the Supplier to carry out the work than to secure Clearance and subject to the Customer's agreement, the Customer's existing practices for escorting and supervising un-cleared Sub-Contractors will be followed until such time as the Sub-Contractor's Clearance is confirmed.
- 19.5 Where the persons engaged by a Sub-Contractor have previously held Clearance, the Supplier may consider such person's Clearance as current if that person has not worked continuously on jobs where Clearance is required, only where the following conditions are met:
 - 19.5.1 that person's existing Clearance is not more than three (3) Years old in relation to non List x or five (5) Years old in relation to List x;
 - 19.5.2 the Sub-Contractor has worked on a previous job and had required clearance in the past twelve (12) Months; or
 - 19.5.3 the Sub-Contractor has not resided overseas for more than six (6) Months since its last cleared post.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Save as expressly granted elsewhere under this Contract:
 - 20.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - 20.1.1.1 the Supplier Software;
 - 20.1.1.2 the Documentation; or
 - 20.1.1.3 the Supplier Pre-Existing IPR,
- and

- 20.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
 - 20.1.2.1 the Customer Software;
 - 20.1.2.2 the Customer Pre-Existing IPR;
 - 20.1.2.3 the Customer Data;
 - 20.1.2.4 the Assigned Software; or
 - 20.1.2.5 Specially Written Software; or
 - 20.1.2.6 the Project Specific IPR;
- 20.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 20.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 20.3 The Supplier shall not, and shall procure that its Staff shall not, (except when necessary for the performance of the Contract) without Approval, use or disclose any of the Customer's Software, Customer's Pre-Existing IPR, Assigned Software, Customer Data, Specially Written Software or the Project Specific IPRs to any third party.
- 20.4 In relation to the Supplier Software:
 - 20.4.1 the Gold Software shall be licensed on the Gold License Terms;
 - 20.4.2 the Silver Software shall be licensed on the Silver License Terms;
 - 20.4.3 the Bronze Software shall be licensed on the Bronze License Terms;
 - 20.4.4 the COTS Software shall be licensed on the COTS License Terms; and
 - 20.4.5 the Assigned Software shall be subject to the Assigned Software Terms.
- 20.5 The Supplier hereby grants, or shall procure the direct grant, to the Customer (and the Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to use the Supplier Pre-Existing IPR and the Documentation so far as is necessary for the Customer to receive the Services and make use of the services provided by the Replacement Supplier.
- 20.6 The Supplier hereby grants to the Customer a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Customer under this Contract.
- 20.7 The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs or shall procure that the first owner of the Project Specific IPRs assigns them to the Customer on the same basis. Such assignment shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into

existence of the Project Specific IPRs, as appropriate. The Supplier shall waive or procure a waiver of any moral rights in the Project Specific IPRs assigned to the Customer under this Contract.]

- 20.8 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 20.5.
- 20.9 The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty free licence to use the Customer Software, Customer's Pre-Existing IPR, Assigned Software, Specially Written Software, Customer Data and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Supplier to provide the Services. Such licence:
- 20.9.1 includes the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22.6 (Confidentiality); and
- 20.9.2 is granted solely to the extent necessary for performing the Services in accordance with this Contract. The Supplier shall not, and shall procure that the Sub-Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 20.10 In the event of the termination or expiry of this Contract, the licence referred to in Clause 20.9 and any sub-licence granted in accordance with Clause 20.9.1 shall terminate automatically and the Supplier shall deliver to the Customer all material licensed to the Customer pursuant to Clause 20.9 in the Supplier's possession or control.
- 20.11 Subject to Clause 20.12 and Clause 20.13 the Supplier shall ensure that no unlicensed software or open source software (other than such Software in relation to which the Supplier has deposited the Source Code into escrow) is interfaced with or embedded within any Customer Software or Specially Written Software.
- 20.12 Prior to using any third party IPRs in connection with the supply of the Services, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval ("**Request for Approval**"). The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Contract using the third party IPRs in the Request for Approval. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 20.13 Where the Supplier is granted Approval to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Customer a licence upon the terms informed to the Customer in the Request for Approval.
- 20.14 The Supplier shall on demand, during and after the Contract Period, 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 or the Crown may suffer or incur as a result of any claim that the rights granted to the Customer pursuant to this

Contract and/or the performance by the Supplier of the Services and/or Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:

20.14.1 items or materials based upon designs supplied by the Customer; or

20.14.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.

20.15 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:

20.15.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;

20.15.2 shall take due and proper account of the interests of the Customer;

20.15.3 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

20.15.4 shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).

20.16 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:

20.16.1 modify the relevant part of the Services the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that:

20.16.1.1 the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or

20.16.1.2 such substitution shall not increase the burden on the Customer; or

20.16.1.3 the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;

20.16.1.4 there is no additional cost to the Customer; and

20.16.1.5 such modified or substituted services items shall be acceptable to the Customer (such acceptance not to be unreasonably withheld); or

- 20.16.2 procure a licence to use and supply the Services and/or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer;
- 20.16.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations,

and in the event that the Supplier is unable to comply with Clauses 20.16.1 or 20.16.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Service and/or Deliverable that is subject to the Claim.

- 20.17 The Supplier's compliance with Clause 20.16 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with Clause 20.16.
- 20.18 In the event that a modification or substitution in accordance with Clause 20.16.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 20.16.2, the Customer shall be entitled to delete the relevant Service and/or Deliverable from the Contract.
- 20.19 If the Supplier elects to modify or replace an item pursuant to Clause 20.16.1 or to procure a licence in accordance with Clause 20.16.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity set out in Clause 20.14, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring and implementing and the substitute items.
- 20.20 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.
- 20.21 This Clause 20 sets out the entire financial liability of the Supplier with regard to the infringement of any IPRs as a result of the provision of the Services hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise.

21. SOURCE CODE (NOT APPLICABLE UNLESS SPECIFIED BY SUPPLIER)

- 21.1 In relation to the Silver Software, Bronze Software and COTS Software, the Supplier shall, at such intervals notified by the Customer from time to time, deposit the Source Code to such software in escrow with such person as the Customer shall notify and the Supplier shall ensure that the deposited version of such Source Code is kept up to date as such software is modified or upgraded.
- 21.2 In circumstances where the Customer obtains the release of the Source Code to the Silver Software, Bronze Software and COTS Software from escrow, the Supplier hereby grants to the Customer a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of such software to the extent necessary for the receipt of the Services or any Replacement Services or the Customer's normal business undertakings.

- 21.3 In relation to the Gold Software and Assigned Software, the Supplier will deliver to the Customer the Source Code in respect of such software at such intervals as the Customer specifies from time to time including at the same time as each new release of the Gold Software and Assigned Software.

22. PROTECTION OF INFORMATION

22.1 Security Requirements

- 22.1.1 The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 22.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 22.1.3 If 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 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. Any change to the Contract Charges shall then be agreed in accordance with the procedure set out in Clause 39.
- 22.1.4 Until and/or unless a change to the Contract Charges is agreed by the Customer pursuant to Clause 39 the Supplier shall continue to perform the Services in accordance with its existing obligations.

22.2 Malicious Software

- 22.2.1 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).
- 22.2.2 Notwithstanding Clause 22.2.1, 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 Services to their desired operating efficiency.
- 22.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 22.2.1 shall be borne by the Parties as follows:
- 22.2.3.1 by the Supplier, where the Malicious Software originates from the Supplier 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

- 22.2.3.2 by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).]

22.3 Security of Premises

- 22.3.1 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 Staff comply with such requirements.
- 22.3.2 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.

22.4 Customer Data

- 22.4.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 22.4.2 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.
- 22.4.3 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.
- 22.4.4 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.
- 22.4.5 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 Security Policy.
- 22.4.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
- 22.4.6.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent and Fso as soon as practicable but in accordance with the time period notified by the Customer; and/or
- 22.4.6.2 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.
- 22.4.7 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.

22.5 Protection of Personal Data

22.5.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.

22.5.2 The Supplier shall:

22.5.2.1 Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Supplier during the Contract Period);

22.5.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

22.5.2.3 implement appropriate technical and organisational measures to protect the 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 Personal Data and having regard to the nature of the Personal Data which is to be protected;

22.5.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;

22.5.2.5 obtain Approval in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Services;

22.5.2.6 ensure that all 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 22.5;

22.5.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;

22.5.2.8 notify the Customer (within five (5) Working Days) if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
- (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

- 22.5.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
- (a) providing the Customer with full details of the complaint or request;
 - (b) 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;
 - (c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer;
- 22.5.2.10 permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries 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 this Contract;
- 22.5.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer); and
- 22.5.2.12 not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the 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:
- (a) the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraph (b) to (d) below;
 - (b) the Supplier shall set out in its request for a Variation details of the following:
 - (i) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (ii) 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;

- (iii) any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (iv) 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;
- (c) 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
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) 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
 - (ii) 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).]

22.5.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

- 22.5.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to 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).
- 22.5.5 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 22.5 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

22.6 Confidentiality

- 22.6.1 Except to the extent set out in this Clause 22.6 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 22.6.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 22.6.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 22.6.2 Clause 22.6.1 shall not apply to the extent that:
- 22.6.2.1 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 22.8 (Freedom of Information);
 - 22.6.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 22.6.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 22.6.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 22.6.2.5 such information is independently developed without access to the other Party's Confidential Information.
- 22.6.3 The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

- 22.6.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 22.6.5 At the written request of the Customer, the Supplier shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 22.6.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Supplier is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality).
- 22.6.7 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause 15 of the Framework Agreement):
- 22.6.7.1 to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities 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 Contracting Body;
 - 22.6.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
 - 22.6.7.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 22.6.7.4 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.
- 22.6.8 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 22.6.7 is made aware of the Customer's obligations of confidentiality.

- 22.6.9 Nothing in this Clause 22.6 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.
- 22.6.10 In the event that the Supplier fails to comply with Clause 22.6.1 to Clause 22.6.6, the Customer reserves the right to terminate this Contract with immediate effect by notice in writing.
- 22.6.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

22.7 Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989

- 22.7.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
- 22.7.1.1 the Official Secrets Acts 1911 to 1989; and
- 22.7.1.2 Section 182 of the Finance Act 1989.
- 22.7.2 In the event that the Supplier or its Staff fail to comply with this Clause 22.7, the Customer reserves the right to terminate the Contract by giving notice in writing to the Supplier.

22.8 Freedom of Information

- 22.8.1 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.
- 22.8.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 22.8.2.1 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;
- 22.8.2.2 provide the Customer with a copy of all 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
- 22.8.2.3 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.
- 22.8.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any

other Contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

22.8.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.

22.8.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 22.6) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

22.8.5.1 in certain circumstances without consulting the Supplier; or

22.8.5.2 following consultation with the Supplier and having taken their views into account,

provided always that where Clause 22.8.5 applies the Customer shall, in accordance with any recommendations of the 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.

22.8.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of this Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

22.8.7 The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 22.8.5.

22.9 Transparency

22.9.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this 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.

22.9.2 Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

22.9.3 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.

- 22.9.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

23. WARRANTIES AND REPRESENTATIONS

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

- 23.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- 23.1.2 the Contract is executed by a duly authorised representative of the Supplier;
- 23.1.3 in entering the Contract it has not committed any Fraud;
- 23.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 23.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- 23.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been 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 and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
- 23.1.7 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;
- 23.1.8 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;
- 23.1.9 no proceedings or other steps have been taken and not discharged (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;
- 23.1.10 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;

23.2 The Supplier warrants represents and undertakes to the Customer that:

- 23.2.1 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 23.2.2 it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
- 23.2.3 in the three (3) Years prior to the Commencement Date:
 - 23.2.3.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - 23.2.3.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
 - 23.2.3.3 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; and
 - 23.2.3.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

23.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier.

23.4 The Supplier acknowledges and agrees that:

- 23.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and
- 23.4.2 the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

24. LIABILITIES

24.1 Liability

- 24.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
 - 24.1.1.1 death or personal injury caused by its negligence or that of its Staff;

- 24.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
 - 24.1.1.3 any claim under Clause 23.1;
 - 24.1.1.4 any claim under the indemnity in Clauses 13.2.5, 16 to 18 (inclusive), 20.14, 22.5.5 or in respect of a breach of Clause 22.6; or
 - 24.1.1.5 any other matter which, by Law, may not be excluded or limited.
- 24.1.2 Subject to Clause 24.1.4 and Clause 24.1.5 the Supplier shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 24.1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 24.1.4 Subject always to Clause 24.1.1 and Clause 24.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
- 24.1.4.1 for all defaults resulting in direct loss or damage to the property of the other Party shall be subject to the financial limits set out in paragraph 8.1 of the Order Form; and
 - 24.1.4.2 in respect of all other defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equivalent to one hundred and twenty five percent (125%) of the Contract Charges paid or payable to the Supplier in the Year of this Contract, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) Months of the Term, the amount estimated to be paid in the first twelve (12) Months of the Term) and subject to the financial limits set out in paragraph 8.2 of the Order Form.
- 24.1.5 Subject to Clauses 24.1.4 and 24.1.6, in no event shall either Party be liable to the other for any:
- 24.1.5.1 loss of profits;

- 24.1.5.2 loss of business;
- 24.1.5.3 loss of revenue;
- 24.1.5.4 loss of or damage to goodwill;
- 24.1.5.5 loss of savings (whether anticipated or otherwise); and/or
- 24.1.5.6 any indirect, special or consequential loss or damage.
- 24.1.6 The Customer may (among other things) recover as a direct loss:
 - 24.1.6.1 any additional operational and/or administrative expenses arising from the Supplier's Default;
 - 24.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default;
 - 24.1.6.3 the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier; and
 - 24.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.
- 24.1.7 Nothing in this Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 24.1.8 In the event that the Transfer of Undertakings (Protection of Employment) Regulations (as amended) apply in respect of the commencement of any Call-Off Contract, the Supplier shall indemnify the Customer against any claim made against the Customer at any time by any person currently or previously employed by the Customer or by the Supplier for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Customer) resulting from any act or omission of the Supplier. Where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Customer arising or accruing before the relevant Contract Commencement Date the Customer shall similarly indemnify the Supplier.

24.2 Insurance

- 24.2.1 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 (including the insurance policies specified in paragraph 9 of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Period and for the Minimum Insurance Period.

- 24.2.2 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with paragraph 9 of the Order Form.
- 24.2.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause 24 and paragraph 9 of the Order Form or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.2.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 24.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. 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 referred to in Clause 24.2.1.
- 24.2.6 The Supplier shall effect and maintain a professional indemnity insurance policy during the Contract Period in accordance with paragraph 9 of the Order Form and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period in accordance with paragraph 9 of the Order Form.]
- 24.2.7 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 (subject to third party confidentiality obligations) 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 void any insurance, or any cover or claim under any insurance in whole or in part.

24.3 Taxation, National Insurance and Employment Liability

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the

Staff and/or any liability or responsibility to HMRC as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

25. TERMINATION

25.1 Termination on Insolvency

25.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier where the Supplier is a company and in respect of the Supplier:

25.1.1.1 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, its creditors; or

25.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

25.1.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

25.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

25.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

25.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

25.1.1.7 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

25.1.1.8 any event similar to those listed in Clause 25.1.1.1 to 25.1.1.7 occurs under the law of any other jurisdiction.

25.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:

25.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is

made for any composition scheme or arrangement with, or assignment

- 25.1.2.2 a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Supplier's bankruptcy; or
- 25.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 25.1.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- 25.1.2.5 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 fourteen (14) days; or
- 25.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 25.1.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

25.2 Termination on Change of Control

25.2.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

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

25.2.1.2 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 an Approval was granted prior to the Change of Control.

25.2.2 For the purposes of Clause 25.2.1, any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

25.3 Termination relating to Guarantee

25.3.1 Where the Supplier has procured a Guarantee pursuant to Clause 3, the Customer may terminate the Contract with immediate effect if:

- 25.3.1.1 the Guarantor withdraws the Guarantee for any reason whatsoever;
- 25.3.1.2 the Guarantor is in breach or anticipatory breach of the Guarantee;
- 25.3.1.3 any of the events set out in Clauses 25.1.1.1 to 25.1.1.8 occurs in respect of the Guarantor; or
- 25.3.1.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Guarantee is not replaced by an alternative agreement acceptable to the Customer.

25.4 Termination on Default

- 25.4.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a Default and if:
 - 25.4.1.1 the Supplier has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 25.4.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or
 - 25.4.1.3 the Default is a Material Breach of the Contract.
- 25.4.2 In the event that through any Default of the Supplier, data 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 Default of the Supplier.
- 25.4.3 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 the Undisputed Sums Time Period, the Supplier may terminate the Contract in writing subject to giving the length of notice as specified in paragraph 10.1 of the Order Form, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 12.3 (Recovery of Sums Due).

25.5 Termination without Cause

The Customer shall have the right to terminate the Contract at any time by giving the length of written notice to the Supplier specified in paragraph 10.2 of the Order Form.

25.6 Termination of Framework Agreement

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.

25.7 Termination on Financial Standing

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (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:

- 25.7.1 adversely impacts on the Supplier's ability to supply the Services under this Contract; or
- 25.7.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Contract.

25.8 Termination on Audit

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Supplier commits a Default of Clauses 31.1 to Clause 31.8 (Records and Audit Access).

25.9 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses or fails to comply with its obligations as set out in Schedule 7 of the Framework Agreement (Value for Money).

25.10 Termination on Bribery and Corruption

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where the conduct prohibited in Clause 30 (Prevention of Bribery and Corruption) has occurred.

25.11 Termination in relation to Fraud

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in the notice where the conduct prohibited in Clause 33 (Prevention of Fraud) has occurred.

25.12 Termination for continuing Force Majeure Event

Either Party may, by written notice to the other, terminate this Contract if a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) Days.

25.13 Termination on Critical Service Failure

The Authority may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where a Critical Service Failure has occurred.

25.14 Partial Termination

The Customer is entitled to terminate all or part of this Contract pursuant to this Clause 25.14 provided always that the parts of this Contract not terminated can operate effectively to deliver the intended purpose of this Contract.

26. CONSEQUENCES OF EXPIRY OR TERMINATION

26.1 Where the Customer terminates the Contract under Clauses 25.3 (Guarantee), 25.4 (Termination on Default), 25.7 (Financial Standing), 25.8 (Audit), 25.9 (Benchmarking), 25.13 (Termination on Critical Service Failure) and then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clauses 25.3, 25.4, 25.7, 25.8, 25.9 and 25.13, 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.

26.2 Where the Customer terminates the Contract under Clause 25.5 (Termination without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 25.5 (Termination without Cause).

26.3 The Customer shall not be liable under Clause 26.2 to pay any sum which:

26.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

26.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.

26.4 On the termination of the Contract for any reason, the Supplier shall:

26.4.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs 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 Services;

26.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the

formats and on media agreed with the Customer and/or the Replacement Supplier;

- 26.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
 - 26.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under Clause 12.3. Such Property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
 - 26.4.5 transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan as are notified to it by the Supplier and/or the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such contracts;
 - 26.4.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress in accordance with the Exit Plan, or if no Exit Plan has been agreed, provide such assistance and co-operation as the Customer may require;
 - 26.4.7 return to the Customer any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising); and
 - 26.4.8 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 26.5 If the Supplier fails to comply with Clauses 26.4.1 to 26.4.8, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-Contractors where any such items may be held.
- 26.6 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 26.4.6 and 26.4.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 26.7 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 12.2.1 shall automatically terminate without the need to serve notice.
- 26.8 Save as otherwise expressly provided in the Contract:
- 26.8.1 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

- 26.8.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 13.2 (Payment and VAT), 13.3 (Recovery of Sums Due), 20 (Intellectual Property Rights), 22.5 (Protection of Personal Data), 22.6 (Confidentiality), 22.7 (Official Secrets Acts 1911 to 1989), 22.8 (Freedom of Information), 24 (Liabilities), 26 (Consequences of Expiry or Termination), 30 (Prevention of Bribery and Corruption), 31 (Records and Audit Access), 33 (Prevention of Fraud), 37 (Cumulative Remedies), 43 (Conflicts of Interest), 45 (The Contracts (Rights of Third Parties Act 1999) and 49.1 (Governing Law and Jurisdiction).

27. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 27.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause 27. Any such press announcements or publicity proposed under this Clause 27.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 27.2 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 Auditor.
- 27.3 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.

28. HEALTH AND SAFETY

- 28.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 28.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 28.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 28.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff, Sub-Contractors and other persons working on the Premises in the supply of the Services under the Contract.

- 28.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.]

29. ENVIRONMENTAL REQUIREMENTS

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.]

30. PREVENTION OF BRIBERY AND CORRUPTION

30.1 The Supplier shall not:

- 30.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer or other Contracting Body, or any other public body or 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 this Contract;
- 30.1.2 engage in and shall procure that all Supplier's Staff, consultants, agents or Sub-Contractors or any person acting on the Supplier's behalf shall not commit, in connection with this 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.

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

- 30.2.1 paid commission or agreed to pay commission to the Customer, Contracting Body 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; and
- 30.2.2 entered into this 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 other Contracting Body 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 this Contract;

30.3 The Supplier shall:

- 30.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;
- 30.3.2 immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 30;
- 30.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 30 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;

30.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract compliance with this Clause 30. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;

30.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any of its Staff, consultants, agents or Sub-Contractors, or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

30.4 If the Supplier, its Staff, consultants, agents or Sub-Contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

30.4.1 this Clause 30; or

30.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or Contracting Body 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 this Contract by written notice with immediate effect.

30.5 Without prejudice to its other rights and remedies under this Clause 30, 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:

30.5.1 the amount of value of any such gift, consideration or commission; and

30.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 30.

31. RECORDS AND AUDIT ACCESS

31.1 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.

31.2 The Supplier shall keep the records and accounts referred to in Clause 31.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

- 31.3 The Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in Clause 31.2 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:
- 31.3.1 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 the Supplier (including Sub-Contractors);
 - 31.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
 - 31.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
 - 31.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in Schedule 7 of the Framework Agreement and Clause 9 of the Contract;
 - 31.3.5 to review the Supplier's compliance with its security obligations set out in Clause 19;
 - 31.3.6 to review any books of account kept by the Supplier in connection with the provision of the Service;
 - 31.3.7 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;
 - 31.3.8 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
 - 31.3.9 to ensure that the Supplier is complying with its obligations under this Contract.
- 31.4 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.
- 31.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Contract Period and for the period specified in paragraph 12 of the Order Form after the date of termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or the Auditors.
- 31.6 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 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.

31.7 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

31.7.1 all reasonable information requested by the Customer within the scope of the audit;

31.7.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and

31.7.3 access to the Staff.

31.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 31, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

32. DISCRIMINATION

32.1 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).

32.2 The Supplier shall take all reasonable steps to secure the observance of Clause 32.1 by all Staff, servants, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of this Contract.

32.3 The Supplier shall notify the Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by its Staff on the grounds of discrimination arising in connection with the provision of the Services under this Contract.

32.4 The Supplier shall comply with the requirements set out in Schedule 9 (Diversity and Equality).

33. PREVENTION OF FRAUD

33.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

33.2 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 its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

33.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with a Contracting Body or the Customer, the Customer may:

33.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing; and/or

- 33.3.2 recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this Clause 33 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

34. TRANSFER AND SUB-CONTRACTING

- 34.1 Subject to Clause 34.4, the Supplier shall not assign, novate, Sub-Contract or in any other way dispose of the Contract or any part of it without Approval. The Customer has consented to the engagement of the Sub-Contractors listed in paragraph 3.4 of the Order Form.
- 34.2 The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional sub-contractor without the prior written consent of the Authority and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this Clause 34, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and the Sub-Contractors' employees, staff and agents also do, or refrain from doing, such act or thing.
- 34.3 Sub-Contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract. The Supplier shall supply such information about proposed Sub-Contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 34.4 The Supplier may assign to a third party ("the Assignee") the right to receive payment of the Contract Charges or any part thereof due to the Supplier under this Contract (including any interest which the Customer incurs under Clause 13.2.6). Any assignment under this Clause shall be subject to:
- 34.4.1 reduction of any sums in respect of which the Customer exercises its right of recovery under Clause 13.3;
 - 34.4.2 all related rights of the Customer under the contract in relation to the recovery of sums due but unpaid; and
 - 34.4.3 the Customer receiving notification under both Clauses 34.5 and 34.6.
- 34.5 In the event that the Supplier assigns the right to receive the Contract Charges under Clause 34.4.1, the Supplier or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 34.6 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 34.7 The provisions of Clause 13.2 shall continue to apply in all other respects after the assignment and shall not be amended.

- 34.8 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.
- 34.9 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 34.10 The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-Contract shall include:
- 34.10.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Supplier;
 - 34.10.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
 - 34.10.3 a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 22.6 (Confidentiality);
 - 34.10.4 a provision requiring the Sub-Contractor to comply with protection of data requirements pursuant to Clauses 22.4 (Customer Data) and 22.5 (Protection of Personal Data);
 - 34.10.5 a provision requiring the Sub-Contractor to comply with the anti-corruption and anti-bribery requirements pursuant to Clause 30 (Prevention of Bribery and Corruption);
 - 34.10.6 a provision requiring the Supplier to pay any undisputed sum due to the relevant Sub-Contractor within a specified period that does not exceed thirty (30) calendar days from the date the Supplier receives the Sub-Contractor's invoice; and
 - 34.10.7 a provision restricting the ability of the Sub-Contractor to further Sub-Contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority.
- 34.11 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Services, then the Customer may:
- 34.11.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item.
- 34.12 If the Customer exercises the option pursuant to Clause 34.11, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 34.13 Subject to Clause 34.15, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- 34.13.1 any Contracting Body; or
- 34.13.2 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
- 34.13.3 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.

34.14 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 34.15, 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.

34.15 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 34.13 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 both such bodies being referred to as "**the Transferee**"):

34.15.1 the rights of termination of the Customer in Clauses 25.1 (Termination on Insolvency) 25.2 (Termination on Change of Control) and 25.4 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

34.15.2 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.

34.16 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.

34.17 For the purposes of Clause 34.15 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.

35. FORCE MAJEURE

35.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if

such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

- 35.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 35.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 35.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 35.4 If an event of Force Majeure event affects the Services, the Customer may direct the Supplier to procure those Services from a third party service provider in which case the Supplier will be liable for payment for the provision of those Services for as long as the delay in performance continues.
- 35.5 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a replacement supplier pursuant to Clause 35.4, then the Customer will pay the Supplier (a) the Contract Charges; and (b) the difference between the Contract Charges and the new supplier's costs if, in respect of the Services that are subject to Force Majeure, the new service provider's costs are greater than the Contract Charges.

36. WAIVER

- 36.1 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.
- 36.2 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 46 (Notices).
- 36.3 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.

37. CUMULATIVE REMEDIES

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.

38. FURTHER ASSURANCES

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 this Contract.

39. VARIATION

- 39.1 Subject to the provisions of this Clause 39, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 39.2 The Customer may request a Variation by completing and sending the Variation form set out in Schedule 1 ("the 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 Order.
- 39.3 In the event that the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Charges, the Customer may:
- 39.3.1 agree to continue to perform their obligations under the Contract without the Variation; or
 - 39.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, 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 the Dispute Resolution Procedure.
- 39.4 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.

40. SEVERABILITY

- 40.1 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.
- 40.2 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.

41. MISTAKES IN INFORMATION

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 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.

42. SUPPLIER'S STATUS

At all times during the Contract Period the Supplier shall be an independent contractor and nothing in this 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.

43. CONFLICTS OF INTEREST

- 43.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 43.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 43.1 above arises or is reasonably foreseeable.
- 43.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.]

44. ENTIRE AGREEMENT

- 44.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 44.2 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.
- 44.3 The Supplier acknowledges that it has:
- 44.3.1 entered into the Contract in reliance on its own due diligence alone; and
 - 44.3.2 received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Contract.
- 44.4 Nothing in Clauses 44.1 and 44.2 shall operate to exclude Fraud or fraudulent misrepresentation.

- 44.5 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.

45. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 45.1 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, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- 45.2 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 (CRITPA) shall apply to Clauses 16, 17 and 18 to the extent necessary that any Former Supplier and Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Former Supplier and the Replacement Supplier by the Supplier under that Clause 16, 17 and 18 in its own right pursuant to section 1(1) of CRITPA.
- 45.3 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 this Contract or any one or more Clauses of it.

46. NOTICES

- 46.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 46.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 46.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of facsimile transmission or sooner where the other Party acknowledges receipt of such letters or facsimile transmission.
- 46.3 For the purposes of Clause 46.2, the address, email address or fax number of each Party shall be the address, email address and fax number set out in the Order Form.
- 46.4 Either Party may change its address for service by serving a notice in accordance with this Clause 46.
- 46.5 For the avoidance of doubt, any notice given under this Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

47. STANDARDS

- 47.1 The Supplier shall provide the Services and meet its responsibilities and obligations hereunder in accordance with the standards as set out in

Schedule 10 to this Contract. In addition the Supplier shall comply with the Standards set out in Schedule 13, Services Specification to the Framework Agreement.

- 47.2 The Supplier shall discuss with the Customer any conflict that the Supplier reasonably believes that there is or will be between any of the standards and any other obligation under this Contract, and shall comply with the Customer's decision on the resolution of that conflict.]

48. LEGISLATIVE CHANGE

The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a General Change in Law.

49. DISPUTES AND LAW

49.1 Governing Law and Jurisdiction

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.

49.2 Dispute Resolution

- 49.2.1 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 Order Form.

- 49.2.2 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.

- 49.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 49.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 49.2.5 unless:

49.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

49.2.3.2 the Supplier does not agree to mediation.

- 49.2.4 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 Staff shall comply fully with the requirements of the Contract at all times.

- 49.2.5 The procedure for mediation is as follows:

49.2.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to

agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the 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 Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the mediation provider to appoint a Mediator/apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;

- 49.2.5.2 the Parties shall within ten (10) Working Days of the appointment of the 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 mediation provider specified in Clause 49.2.5.1 to provide guidance on a suitable procedure;
- 49.2.5.3 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;
- 49.2.5.4 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;
- 49.2.5.5 failing agreement, either of the Parties may invite the 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
- 49.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the 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.

SCHEDULE 1: CHANGE CONTROL PROCEDURE

CHANGE PRINCIPLES

1. Either party may propose a Change in accordance with the Change Control Procedure as set out in this Schedule 2. Each party shall consider in good faith any proposal for Change from the other party and neither party shall unreasonably withhold its agreement to any Change proposed by the other party. Any discussions between the parties about a proposed Change prior to any agreement to such Change being reached shall be without prejudice to the rights of either party.
2. If either party wishes to propose a Change ("Change Proposer"), it shall submit to the other party ("Change Recipient") a written request detailing the proposed Change ("Change Request") specifying, in as much detail as is reasonably practicable, the nature of the proposed Change. Within ten (10) Working Days of receipt or issue of a Change Request (as the case may be) the party responsible for implementing the Change ("Change Implementer") shall submit to the other party a Change Proposal in accordance with paragraph 3 below.
3. If paragraph 2 of this schedule 8 applies, the Change Implementer shall provide the other party with a written proposal in relation to the relevant Change ("Change Proposal") which shall include the following information (except where such information is not relevant to the proposed Change):
 - 3.1 details of the proposed Change and its impact on the Services or other variations to this Contract;
 - 3.2 which of the Services and Service Levels will be affected and how;
 - 3.3 the cost of developing the proposed Change;
 - 3.4 an initial estimate of the cost of implementation and on-going operation of the relevant Change, including any proposed increase or decrease in the Charges;
 - 3.5 details, if relevant, of the proposed Change's compliance with any applicable Laws;
 - 3.6 a high level of implementation plan and timetable for the proposed Change;
 - 3.7 an assessment of the possible risks of introducing the proposed Change;
 - 3.8 a review of the likely impact of the proposed Change on the timetable for the operational processes in this Contract including the Implementation Plan; and
 - 3.9 a review of the resources required to implement the proposed Change.
4. Within ten (10) Working Days of receipt of the Change Proposal, the receiving party shall notify the Change Implementer whether or not it agrees to the proposed Change. If the receiving party notifies the Change Implementer that it does not wish the proposed Change to be implemented, then no further action shall be taken unless either party wishes to challenge this decision through the dispute resolution procedure set out in clause 48. If the receiving party notifies the Change Implementer that it accepts the proposed Change, then the parties shall agree a Change Control Record

(the form of which is set out in appendix A to this schedule 8 as soon as reasonably practicable and shall then implement the Change in accordance with the terms of the agreed Change Control Record.

5. Until such time as both parties have agreed a proposed Change in accordance with this Change Control Procedure, both parties shall, unless otherwise expressly agreed in writing, continue to perform their obligations under this Contract and any Order in accordance with its terms and shall be under no obligation to perform any work in relation to a proposed Change except for complying with the obligations set out in this Change Control Procedure, including the production of a Change Proposal.
6. Notwithstanding paragraph 12 of this schedule, any additional work undertaken by either party, its Sub-contractors or agents which has not been authorised in advance by a Change shall be undertaken entirely at the expense and liability of that party and the other party shall have no obligation to make any payment in connection with such work.
7. Without prejudice to the Supplier's obligations under clause 14, if Change is required as a result of a change in applicable Laws or a Force Majeure Event, then the parties shall comply with the procedures set out in this Change Procedure in so far as they are reasonably able in the circumstances. However, under no circumstances shall a party seek to hold the other party to the Change Control Procedure, if to do so would result in either party failing to comply with the change in applicable Laws or the impact of the Force Majeure Event not being mitigated.

FAST TRACK CHANGES

8. The parties acknowledge to ensure operational efficiency that there may be circumstances where it is desirable to expedite the processes set out above.
9. If both parties agree in relation to a proposed Change that:
 - 9.1 the Change does not involve any alteration to, or deviation from the contractual principles set out in the Agreement; and
 - 9.2 the total number of Changes in relation to which this fast track procedure has been applied does not exceed four in any 12 month period (or such higher number as the Customer may from time to time agree in writing); and
 - 9.3 the value of the proposed Contract Change does not exceed £5,000 and the proposed Change is not significant (as determined by the Customer acting reasonably),
 - 9.4 then the parties shall confirm to each other in writing that they shall use the process set out in paragraphs 2, 3, 4, 5, 6 and 7 above but with reduced timescales, such that any period of ten (10) Working Days is reduced to three (3) Working Days.
10. The parameters set out in paragraph 9.4 may be revised from time to time by agreement between the parties in writing.

EMERGENCY CHANGES

11. If the Customer believes:

- 11.1 a Change is required to respond to an emergency whether by virtue of a change in Law or operational circumstances (in either case as the Customer reasonably determines); and
- 11.2 that it would not be practicable to agree the content of a Change Record prior to the implementation of the Change,

the Customer may require the Supplier to commence work immediately to implement the Change (without, therefore, a formal Change Request or Change Proposal) and the parties will subsequently agree the detail of the appropriate Change Record. In such a situation, the Supplier will use its best endeavours to comply with the Customer's request as soon as possible.

BUSINESS AS USUAL CHANGES

12. The parties agree that Business As Usual Changes shall not be subject to the Change Procedure. "Business As Usual Changes" for the purpose of this schedule 8 means a Change which the parties agree is sufficiently small in the effort required to process it, such that it does not need to be processed in accordance with the Change Control Procedure (such a Change shall not exceed 5 man days of effort and cumulatively, such Changes shall not exceed 20 man days of effort in any Contract Year.

DISPUTES

13. In the event of any dispute arising under this Change Control Procedure which cannot be resolved within ten (10) Working Days, either party shall be entitled to refer the dispute for resolution in accordance with the Dispute Resolution provisions set out at clause 49 of this Contract.
14. The parties shall meet as required and on request by either party to discuss the order in which agreed Changes are implemented and to monitor the implementation of such Changes.

CHARGES FOR CHANGES

15. Both parties shall take all reasonable steps to avoid or minimise additional charges arising from any Change, including where possible using resources already deployed in providing the Services at no additional cost. If additional resources or costs will be required then the parties shall calculate the cost of the Change in accordance with Schedule 14, Charging Structure.

SCHEDULE 1, APPENDIX A: CHANGE CONTROL RECORD

No of Order Form being varied:.....

Change Control Number :

Date:

BETWEEN:

DfE Standards and Testing Agency ("the Customer")

and

Parcelforce Worldwide Ltd ("the Supplier")

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

Title of Change:

Originator:

Reason for the Change:

Description (giving full details, including any specifications):

Acceptance testing and criteria (if applicable):

The cost of the Change:

Timetable:

Impact on the Contract

Agree to proceed (Yes/No):

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
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 2: SECURITY MANAGEMENT PLAN

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

"Breach of Security"	in accordance with the security requirements in paragraph 2.5 of the Order Form and the Security Policy, the occurrence of: (a) any unauthorised access to or use of the Services, the Premises, the Sites, the Supplier 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"	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 Services;
"Protectively Marked"	shall have the meaning as set out in the Security Policy Framework;
"Security Policy Framework"	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
"Security Tests"	shall have the meaning set out in paragraph 5 of this Schedule 2;
"Statement of Applicability"	shall have the meaning set out in ISO/IEC 27001 and as agreed by the Parties during the procurement phase.

1. INTRODUCTION

1.1 This Schedule covers:

- 1.1.1 principles of protective security to be applied in delivering the Services;
- 1.1.2 wider aspects of security relating to the 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 paragraph 2.5 of the Order Form);
- 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 6 of this Schedule;
 - 2.2.6 complies with the security requirements as set out in paragraph 2.5 of the Order Form; and
 - 2.2.7 complies with the Customer's ICT standards.
- 2.3 Subject to Clause 47, 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, without prejudice to paragraph 2.2, be approved, by the Customer, tested in accordance with Schedule 4, 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 Contract Period.
- 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 Services and all processes associated with the delivery of the Services, including the Premises, the Sites, the Supplier 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 Commencement Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with paragraph 4.2 (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 4.2 (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 the Dispute

Resolution Procedure. 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.

4. Content of the Security Management Plan

- 4.1.1 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 Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this 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);
- 4.1.2 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 Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in this Contract and paragraph 2.7 of the Order Form.
- 4.1.3 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.
- 4.1.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule.

4.2 Amendment and Revision of the ISMS and Security Management Plan

- 4.2.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
 - 4.2.1.1 emerging changes in Good Industry Practice;
 - 4.2.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
 - 4.2.1.3 any new perceived or changed security threats;
 - 4.2.1.4 any reasonable request by the Customer.
- 4.2.2 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:

- 4.2.2.1 suggested improvements to the effectiveness of the ISMS;
 - 4.2.2.2 updates to the risk assessments;
 - 4.2.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
 - 4.2.2.4 suggested improvements in measuring the effectiveness of controls.
- 4.2.3 On receipt of the results of such reviews, the Customer will Approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.2.2.
- 4.2.4 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 paragraph 2.5 of the Order Form or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

5. TESTING

- 5.1 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.
- 5.2 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.
-
- 5.3 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 Services. If such tests adversely affect the Supplier's ability to deliver the Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.1 and 5.2 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 paragraph 2.7 of the Order

Form), the change to the ISMS or Security Management Plan shall be at no cost to the Customer. For the purposes of this paragraph 5, weaknesses means a vulnerability in security and failure means a possible breach of the Security Management Plan or security requirements.

6. COMPLIANCE WITH ISO/IEC 27001

- 6.1 Where the Customer requests, the Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve (12) Months of the 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 If, as a result of any such independent audit as described in paragraph 6.3 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.

7. BREACH OF SECURITY

- 7.1 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.
- 7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1, the Supplier shall:
 - 7.2.1 immediately take all reasonable steps necessary to:
 - 7.2.1.1 remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and

7.2.1.2 prevent an equivalent breach in the future.

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; and

7.2.2 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.

SCHEDULE 3: PARENT COMPANY GUARANTEE – NOT APPLICABLE

SCHEDULE 4: TESTING

1. INTRODUCTION

This schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans.

2. TESTING OVERVIEW

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy and the Test Plans.
- 2.2 Any disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

3. TEST STRATEGY

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree) after the Commencement Date.
- 3.2 The final Test Strategy shall include:
 - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
 - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 3.2.3 the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
 - 3.2.4 the procedure to be followed to sign off each Test; and
 - 3.2.5 the process for the production and maintenance of reports relating to Tests.

4. TEST PLANS

- 4.1 The Supplier shall develop Test Plans for the approval of the Customer as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 4.2 Each Test Plan shall include as a minimum:
 - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;
 - 4.2.2 a detailed procedure for the Tests to be carried out, including:
 - 4.2.2.1 the timetable for the Tests including start and end dates;

- 4.2.2.2 the Testing mechanism;
- 4.2.2.3 dates and methods by which the Customer can inspect Test results;
- 4.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;
- 4.2.2.5 the process with which the Customer will review Test Issues and progress on a timely basis; and
- 4.2.2.6 the re-Test procedure, the timetable and the resources which would be required for re-Testing.

- 4.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

5. TESTING

- 5.1 When the Supplier has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 5.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 5.3 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Contract.

6. TEST ISSUES

Where a Test Issue is identified by the Supplier, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

7. TEST QUALITY AUDIT

- 7.1 Without prejudice to its rights pursuant to Clause 31, the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.
- 7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

- 7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

8. OUTCOME OF TESTING

- 8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.

- 8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or

8.2.2 the Parties shall treat the failure as a Supplier Default.

APPENDIX: SATISFACTION CERTIFICATE

To: Parcelforce Worldwide Ltd
FROM: DfE Standards and Testing Agency

28/02/2013

Dear Sirs,

SATISFACTION CERTIFICATE

Milestones: ***Guidance Note to Customer: Insert description of the relevant Deliverables/Milestones STA to Complete***

We refer to the agreement ("Contract") relating to the provision of the Seasonal Courier Services between the DfE Standards and Testing Agency ("Customer") and Parcelforce Worldwide Ltd ("Supplier") dated 14/03/2013.

The definitions for terms capitalised in this certificate are set out in the Contract.

We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.

Yours faithfully

Jonathan Bryan

Materials Manager acting on behalf of DfE Standards and Testing Agency