

**Schedule 5**  
**ICT Services**  
**(Call-Off Schedule 6)**

## Schedule [●] ICT Services

### 1. Definitions

1.1. In this Schedule, the following words shall have the following meanings:

<b>"Client Property"</b>	the property, other than real property and IPR, including the Client System, any equipment issued or made available to the <i>Service Provider</i> by the <i>Client</i> in connection with this contract;
<b>"Client Software"</b>	any software which is owned by or licensed to the <i>Client</i> and which is or will be used by the <i>Service Provider</i> for the purposes of providing the <i>service</i> ;
<b>" Client System"</b>	the <i>Client's</i> computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Client</i> or the <i>Service Provider</i> in connection with this contract which is owned by or licensed to the <i>Client</i> by a third party and which interfaces with the Service Provider System or which is necessary for the <i>Client</i> to receive the <i>service</i> ;
<b>"Commercial off the shelf Software" or "COTS Software"</b>	non-customised software where the IPR may be owned and licensed either by the <i>Service Provider</i> or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
<b>"Due Diligence Information"</b>	any information supplied to the <i>Service Provider</i> by or on behalf of the <i>Client</i> prior to the Contract Date;
<b>"Emergency Maintenance"</b>	ad hoc and unplanned maintenance provided by the <i>Service Provider</i> where either Party reasonably suspects that the ICT Environment or the <i>service</i> , or any part of the ICT Environment or the <i>service</i> , has or may develop a fault or is at risk from Malicious Software;
<b>"Existing IPR"</b>	any and all IPR that is owned by or licensed to either Party and which has or will be developed independently of the contract (whether prior to the Contract Date or otherwise);
<b>"ICT Environment"</b>	the Client System and the Service Provider System;
<b>"IPR"</b>	any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other

	intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
<b>"Licensed Software"</b>	all and any Software licensed by or through the <i>Service Provider</i> , its Subcontractors or any third party to the <i>Client</i> for the purposes of or pursuant to this contract, including any COTS Software;
<b>"Maintenance Schedule"</b>	has the meaning given to it in paragraph 8 of this Schedule;
<b>"Malicious Software"</b>	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;
<b>"New Release"</b>	an item produced primarily to extend, alter or improve the Software and/or any <u>service</u> by providing additional functionality or performance enhancement (whether or not defects in the Software and/or <i>service</i> are also corrected) while still retaining the original designated purpose of that item;
<b>"New IPR"</b>	<p>a) IPR in items created by the <i>Service Provider</i> (or by a third party on behalf of the <i>Service Provider</i>) specifically for the purposes of this contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the <i>Service Provider's</i> obligations under this contract and all updates and amendments to the same;</p> <p>but shall not include the <i>Service Provider's</i> Existing IPR;</p>
<b>"Open Source Software"</b>	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all

	persons and for any and all purposes free of charge;
<b>"Operating Environment"</b>	means the Client System and any premises (including the Affected Property, the <i>Service Provider's</i> premises or third party premises) from, to or at which: a) the <i>service</i> is (or is to be) provided; or b) the <i>Service Provider</i> manages, organises or otherwise directs the provision or the use of the <u><i>service</i></u> ; or c) where any part of the Service Provider System is situated;
<b>"Permitted Maintenance"</b>	has the meaning given to it in paragraph 8.2 of this Schedule;
<b>"Quality Plans"</b>	has the meaning given to it in paragraph 6.1 of this Schedule;
<b>"Software"</b>	Specially Written Software, COTS Software and non-COTS Service Provider and third party software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in paragraph 9.1 of this Schedule;
<b>"Source Code"</b>	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 related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Specially Written Software"</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the <i>Service Provider</i> (or by a Subcontractor or other third party on behalf of the <i>Service Provider</i> ) specifically for the purposes of this contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
<b>"Service Provider System"</b>	the information and communications technology systems used by the <i>Service Provider</i> in supplying the <i>service</i> , including the COTS

	Software, the <i>Service Provider's</i> equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client System) including all modifications and enhancements and upgrades;
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## 2. When this Schedule should be used

- 2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the *service*.

## 3. Buyer due diligence requirements

- 3.1. The *Service Provider* shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
- 3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Contract Date) future Operating Environment;
  - 3.1.2. operating processes and procedures and the working methods of the *Client*;
  - 3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the *service* of the Client Assets; and
  - 3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the *Service Provider* under this contract and/or which the *Service Provider* will require the benefit of for the provision of the *service*.
- 3.2. The *Service Provider* confirms that it has advised the *Service Manager* in writing of:
- 3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the *service*;
  - 3.2.2. the actions needed to remedy each such unsuitable aspect; and
  - 3.2.3. a timetable for and the costs of those actions.

## 4. Licensed software warranty

- 4.1. The *Service Provider* represents and warrants that:
- 4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the *Service Provider* (and/or any Subcontractor) to the *Client* which are necessary for the performance of the *Service Provider's* obligations under this contract including the receipt of the *service* by the *Client*;

- 4.1.2. all components of the Specially Written Software shall:
  - 4.1.2.1. be free from material design and programming errors;
  - 4.1.2.2. perform in all material respects in accordance with the contract; and
  - 4.1.2.3. not infringe any IPR.

## 5. Provision of ICT Services

- 5.1. The *Service Provider* shall:
  - 5.1.1. ensure that the release of any new *Service Provider Software*, or upgrade to any *Service Provider* complies with the requirements of the *Client* (including functional and interface requirements) and (except in relation to Emergency Maintenance) shall notify the *Service Manager* three (3) months before the release and/or upgrade of any *Service Provider Software*;
  - 5.1.2. ensure that all *Software* including upgrades, updates and *New Releases* used by or on behalf of the *Service Provider* are currently supported versions of that *Software* and perform in all material respects in accordance with the relevant specification;
  - 5.1.3. ensure that the *Service Provider System* will be free of all encumbrances;
  - 5.1.4. ensure that the *service* is fully compatible with any *Client Software* and *Client System*;
  - 5.1.5. minimise any disruption to the *service* and the *ICT Environment* and/or the *Client's* operations when providing the *service*;

## 6. Standards and Quality Requirements

- 6.1. The *Service Provider* shall develop quality plans that ensure that all aspects of the *service* are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2. The *Service Provider* shall seek acceptance from the *Service Manager* (not to be unreasonably withheld or delayed) of the *Quality Plans* before implementing them.
- 6.3. Following the acceptance of the *Quality Plans*, the *Service Provider* shall Provide the *Service* in accordance with the *Quality Plans*.

## 7. ICT Audit

- 7.1. The *Service Provider* shall allow any auditor duly authorised by the *Client* access to the *Service Provider's* premises or remote access to the *Service Provider System* to:
  - 7.1.1. inspect the *ICT Environment* and the wider *service delivery environment* (or any part of them);

- 7.1.2. review any records created during the design and development of the Service Provider System and pre-operational environment such as information relating to testing;
- 7.1.3. review the *Service Provider's* quality management systems including all relevant Quality Plans.

## 8. Maintenance of the ICT Environment

- 8.1. The *Service Provider* shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the *Service Manager* for acceptance in accordance with the timetable and instructions specified by the *Service Manager*.
- 8.2. Once the Maintenance Schedule has been accepted, the *Service Provider* shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 8.3. The *Service Provider* shall give as much notice as is reasonably practicable to the *Service Manager* prior to carrying out any Emergency Maintenance.
- 8.4. The *Service Provider* shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the *service* or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the *service*.

## 9. IPR in ICT

### 9.1. Assignments granted by the *Service Provider*: Specially Written Software

9.1.1. The *Service Provider* assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the *Client* with full guarantee (or shall procure assignment to the *Client*), title to and all rights and interest in the Specially Written Software together with and including:

9.1.1.1. the documentation, Source Code and the object code of the Specially Written Software; and

9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").

9.1.2. The *Service Provider* shall:

9.1.2.1. inform the *Service Manager* of all Specially Written Software or New IPR that are a modification, customisation, configuration or enhancement to any COTS Software;

9.1.2.2. deliver to the *Service Manager* the Specially Written Software and any computer program elements of the New IPR in both

Source Code and object code forms together with relevant documentation and all related Software Supporting Materials within seven days of completion, upon request or, if a relevant Milestone has been identified in a Mobilisation Plan, achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the *Service Manager* and the *Client* shall become the owner of such media upon receipt; and

9.1.2.3. without prejudice to paragraph 9.1.2.2, provide full details to the *Service Manager* of any of the *Service Provider's* Existing IPR or third party IPR which are embedded or which are an integral part of the Specially Written Software or New IPR and the *Service Provider* hereby grants to the *Client* and shall procure that any relevant third party licensor shall grant to the *Client* a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such *Service Provider's* Existing IPR and third party IPR to the extent that it is necessary to enable the *Client* to obtain the full benefits of ownership of the Specially Written Software and New IPR.

9.1.3. The *Service Provider* shall promptly execute all documents as are required to ensure that any rights in the Specially Written Software and New IPR are properly transferred to the *Client*.

**9.2. Licences for non-COTS IPR from the *Service Provider* and third parties to the *Client***

9.2.1. Unless the *Service Manager* gives its acceptance the *Service Provider* must not use any:

- a) of its own Existing IPR that is not COTS Software;
- b) third party software that is not COTS Software

9.2.2. Where the *Service Manager* accepts the use of the *Service Provider's* Existing IPR that is not COTS Software the *Service Provider* shall grants to the *Client* a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the service (or substantially equivalent deliverables) or for any purpose relating to the exercise of the *Client's* and any other central government body's business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Service Period and after expiry of the contract to the extent necessary to ensure continuity of service and an effective transition to a replacement service provider.

9.2.3. Where the *Service Manager* accepts the use of third party Software that is not COTS Software the *Service Provider* shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the *Client* on terms at least equivalent to those set out in

paragraph 9.2.2. If the *Service Provider* cannot obtain such a licence for the *Client* it shall:

9.2.3.1. notify the *Service Manager* in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the *Service Provider* could seek to use; and

9.2.3.2. only use such third party IPR as referred to at paragraph 9.2.3.1 if the *Service Manager* accepts the terms of the licence from the relevant third party.

9.2.4. Where the *Service Provider* is unable to provide a license to the *Service Provider's* Existing IPR in accordance with paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

### 9.3. **Licenses for COTS Software by the *Service Provider* and third parties to the *Client***

9.3.1. The *Service Provider* shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the *Client* on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2. Where the *Service Provider* owns the COTS Software it shall make available the COTS software to a replacement service provider at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this paragraph 9.3 the *Service Provider* shall support the replacement service provider to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4. The *Service Provider* shall notify the *Service Manager* within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

9.3.4.1. will no longer be maintained or supported by the developer;  
or

9.3.4.2. will no longer be made commercially available

### 9.4. ***Client's* right to assign/novate licences**

9.4.1. The *Client* may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraphs 9.2 and 9.3 to:

9.4.1.1. a central government body; or

9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities

that previously had been performed and/or carried on by the *Client*.

## 9.5. Licence granted by the *Client*

9.5.1. The *Client* grants to the *Service Provider* a royalty-free, non-exclusive, non-transferable licence during the Service Period to use the Client Software and the Specially Written Software solely to the extent necessary for providing the *service* in accordance with this contract, including the right to grant sub-licences to Subcontractors provided that any relevant Subcontractor has entered into a confidentiality undertaking with the *Service Provider* on the same terms as set out in the contract.

## 9.6. Open Source Publication

9.6.1. Unless the *Service Manager* otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the *Service Provider* shall also provide the converted format to the *Service Manager*) into a format, which is:

9.6.1.1. suitable for publication by the *Client* as open source; and

9.6.1.2. based on the UK government's 'Open Standards' policy (where applicable),

and the *Client* may, at its sole discretion, publish the same as open source.

9.6.2. Except where the *Service Manager* has otherwise agreed, the *Service Provider* hereby warrants that the Specially Written Software and the New IPR:

9.6.2.1. are suitable for release as open source and that the *Service Provider* has used reasonable endeavours when developing the same to ensure that publication by the *Client* will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPR and/or the Client System;

9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the *Client* shall not cause any harm or damage to any party using them;

9.6.2.3. do not contain any material which would bring the *Client* into disrepute;

9.6.2.4. can be published as open source without breaching the rights of any third party;

9.6.2.5. will be supplied in a format suitable for publication as open source ("**the Open Source Publication Material**") no later

than the date notified by the *Service Manager* to the *Service Provider*; and

9.6.2.6. do not contain any Malicious Software.

9.6.3. Where the *Service Manager* has accepted a request by the *Service Provider* for any part of the Specially Written Software or New IPR to be excluded from the requirement to be in an open source format due to the intention to embed or integrate *Service Provider's* Existing IPR and/or third party IPR (and where the Parties agree that such IPR is not intended to be published as open source), the *Service Provider* shall:

9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPR and items or *service* based on IPR which is to be excluded from open source publication; and

9.6.3.2. include in the written details and information about the impact that inclusion of such IPR or *service* based on such IPR, will have on any other Specially Written Software and/or New IPR and the *Client's* ability to publish such other items or *service* as open source.

## 9.7. Malicious Software

9.7.1. The *Service Provider* shall, throughout the Service Period, use the latest versions of antivirus 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 to the Software and ICT Environment.

9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software to the ICT Environment and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the *service* to its desired operating efficiency.

9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:

9.7.3.1. by the *Service Provider*, where the Malicious Software originates from the Service Provider Software, the third party Software supplied by the *Service Provider* or the Government Data (whilst the Government Data was under the control of the *Service Provider*) unless the *Service Provider* can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the *Client* when provided to the *Service Provider*; and

9.7.3.2. by the *Client*, if the Malicious Software originates from the Client Software or the *Client* data (whilst the *Client* data was under the control of the *Client*).

## **10. Service Provider Furnished Terms**

### **10.1. Software Licence Terms**

10.1.1.1. Terms for licensing of non-COTS third party software in accordance with Paragraph 9.2.3 are detailed in Annex 1.

10.1.1.2. Terms for licensing of COTS software in accordance with Paragraph 9.3 are detailed in Annex 2.

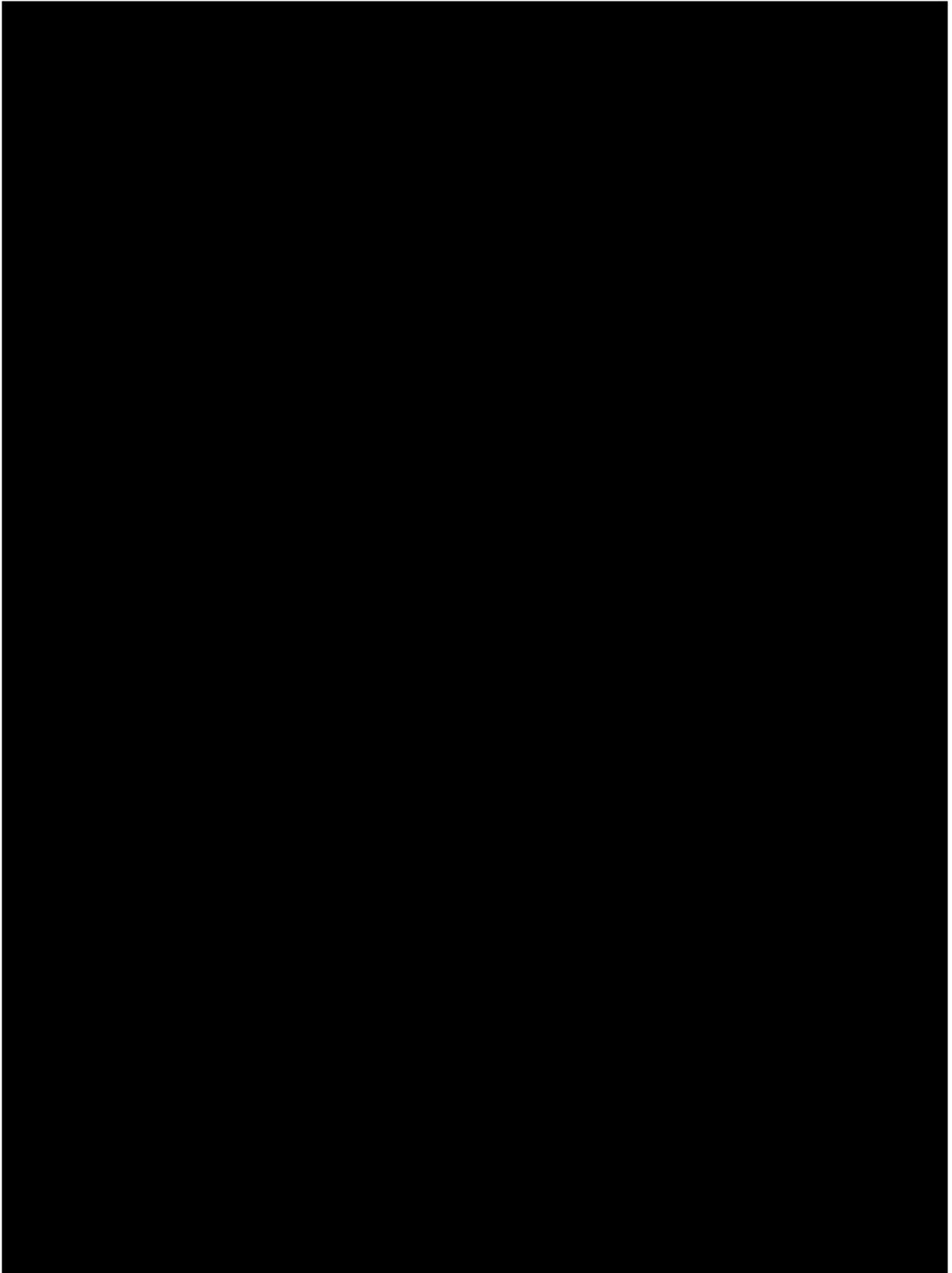
### **10.2. Software as a Service Terms**

10.2.1.1. Additional terms for provision of a Software as a Service solution are detailed in Annex 3.

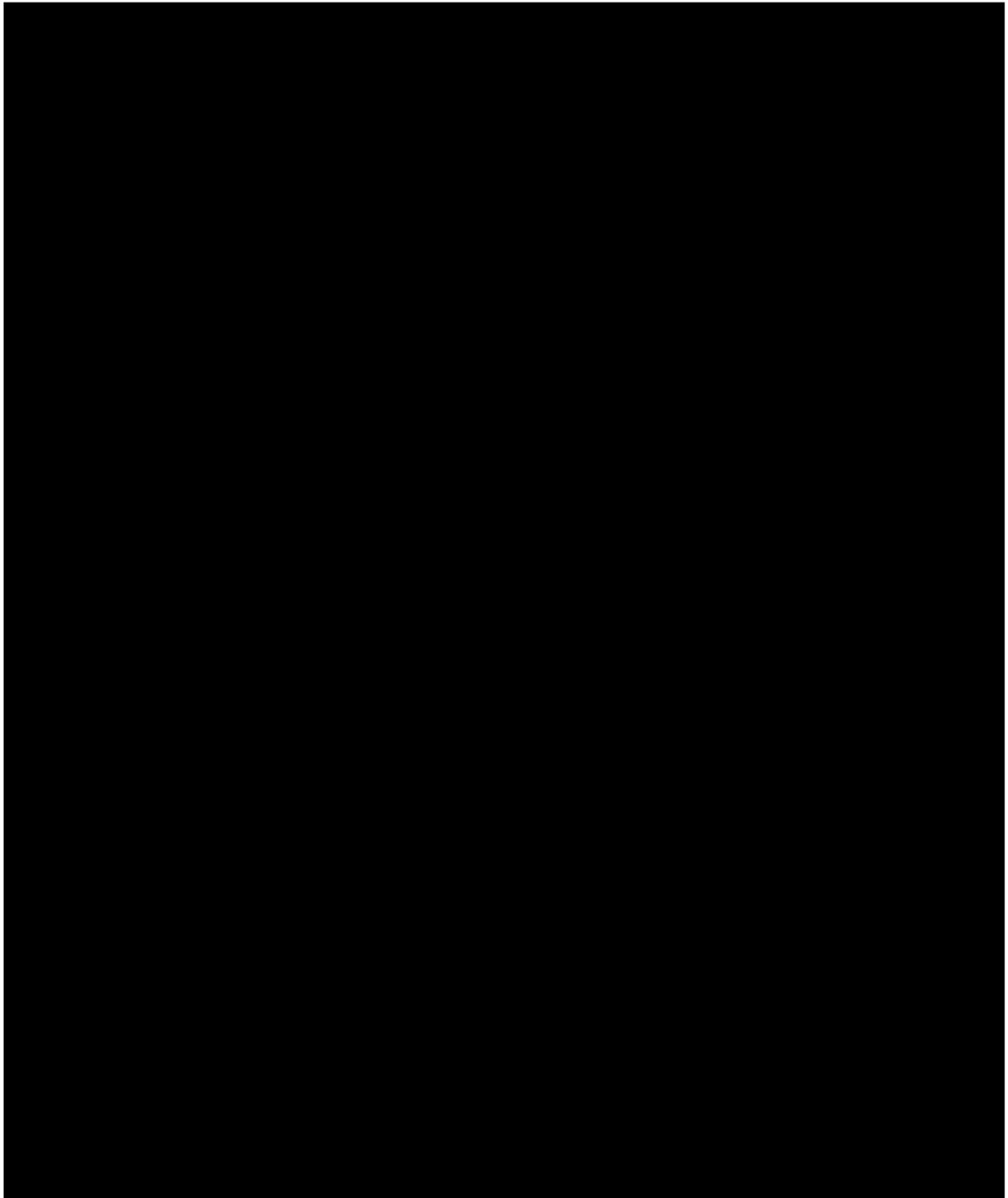
### **10.3. Software Support & Maintenance Terms**

10.3.1.1. Additional terms for provision of Software Support & Maintenance Services are detailed in Annex 4.

**Annex 1 Non-COTS** - Solutions that have been customised / developed for a customer's specific need.



**Annex 2- COTS** - Commercial Off-the-Shelf Software used without any form of modification.



**Annex 3- SaaS** - Software solution that has been purchased on a pay-as-you-go basis from a cloud service provider.



## **Annex 4**

Software support and/or maintenance provisions are outlined in the tables above at Annexes 1-3.