

Dated

6th May 2022

AGREEMENT

BETWEEN

NATIONAL HIGHWAYS LIMITED

AND

eLocker



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THIS AGREEMENT is made on

6th May 2022

BETWEEN

- (1) **National Highways Limited** a company registered in England and Wales under company number 09346363 whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ (the “**Customer**”); and
- (2) **eLocker** a company registered in England and Wales under company number 08729072 whose registered office is at 2 The Hill, Chellaston, Derby, DE736WB (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

INTRODUCTION

- (A) The Customer is responsible for operating, maintaining and improving the Strategic Road Network in England. The Customer’s strategy and business plan set out a clear aim of ‘safe roads, reliable journeys, informed travellers’. This aim is supported by the prime objective of delivering a high-quality service to all customers by:
 - Reducing congestion and improving reliability;
 - Improving road safety;
 - Respecting the environment; and
 - Seeking and responding to feedback from customers.
- (B) The Customer wishes to appoint a supplier to provide a locker infrastructure for the storage/charging of the communication devices used in the new Emergency Services Network (ESN).
- (C) To commence the procurement process the Customer issued a contract notice in the UK e-notification service Find a Tender (FTS) 6th January 2022 and selected the Supplier through an open procedure process pursuant to the Regulations.
- (D) The Customer now wishes to appoint the Supplier to provide the Services on the terms of this Agreement.

IT IS AGREED as follows:

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

- 1.1.1 references to this Agreement or to a document are references to this Agreement or that document as amended or novated (in each case other than in breach of the provisions of this Agreement) from time to time.

- 1.1.2 capitalised expressions shall have the meanings set out in **Schedule 1 (Definitions)** or the relevant Schedule in which that capitalised expression appears.
- 1.1.3 If a capitalised expression does not have an interpretation in **Schedule 1 (Definitions)** or relevant Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 the words “**include**”, “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “**without limitation**”;
 - 1.2.6 references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.7 references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under this Agreement;
 - 1.2.8 references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the Clauses and Schedules of this Agreement and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
 - 1.2.9 the headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
 - 1.2.10 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 The Customer shall be deemed not to be in Default pursuant to this Agreement to the extent that any such Default is due to the Default of the Supplier.

- 1.4 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyper link is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall update the Agreement with a reference to the replacement hyperlink.
- 1.5 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.5.1 the Clauses and **Schedule 1 (Definitions)**
 - 1.5.2 **Schedule 2 (Services)**;
 - 1.5.3 any other Schedules and their Annexes (other than **Part D of Schedule 4 (Supplier Solution)** and its Annexes)]; and
 - 1.5.4 **Part D of Schedule 4 (Supplier Solution)** and its Annexes (if any)
 - 1.5.5 any other document referred to in the Agreement.
- 1.6 The Schedules and their Annexes form part of this Agreement.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
 - 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information and that it has entered into this Agreement in reliance on its own due diligence alone;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Commencement Date) of all relevant details, including but not limited to details relating to the:
 - (a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Commencement Date) future Operating Environment;
 - (b) operating processes and procedures and the working methods of the Customer;
 - (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and
 - (d) existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or

which the Supplier will require the benefit of for the provision of the Services; and

2.1.4 it has advised the Customer in writing of:

- (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (b) the actions needed to remedy each such unsuitable aspect; and
- (c) a timetable for and the costs of those actions.

2.1.5 the Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:

- (a) unsuitable aspects of the Operating Environment;
- (b) misinterpretation of the requirements of the Customer in this Agreement; and/or
- (c) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. SPIRIT OF TRUST AND CO-OPERATION

3.1 The Customer and the Supplier shall act as stated in this Agreement and in a spirit of mutual trust and cooperation.

4. REPRESENTATIONS AND WARRANTIES

4.1 Each Party represents and warrants that:

4.1.1 it has full capacity and authority to enter into and to perform this Agreement

4.1.2 this Agreement is executed by its duly authorised representative;

4.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Agreement; and

4.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

4.2 The Supplier represents and warrants that:

4.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

- 4.2.2 it has full capacity and authority and all necessary authorisations, consents (including, where its procedures so require, the consent of its Parent Company), licences, permissions and regulatory approvals to enter into this Agreement;
- 4.2.3 its execution, delivery and performance of its obligations under this Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 4.2.4 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement;
- 4.2.5 all Supplier Personnel assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services;
- 4.2.6 as at the Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
- 4.2.7 it has and shall continue to have all necessary rights in and to the Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Agreement including the receipt of the Services by the Customer;
- 4.2.8 it shall use the best applicable and available techniques and standards and will perform the Services with all reasonable care, skill and diligence, and according to Good Industry Practice.
- 4.2.9 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- 4.2.10 it shall maintain any interface and interoperability between third-party software or Services and software or Services developed by the Supplier.
- 4.2.11 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 4.2.12 it is not affected by an Insolvency Event and 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; and

4.2.13 for the Term and for a period of twelve (12) Months after the termination or expiry of this Agreement the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval, which shall not be unreasonably withheld. However, this **Clause 4.2.13** shall not preclude the Supplier's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Customer who approaches the Supplier on an unsolicited basis; or (iii) solicit for employment or hire any such employee who ceases to be employed by the Customer

- 4.3 Each of the representations and warranties set out in **Clauses 4.1** and **4.2** shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Agreement.
- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under **Clauses 4.1** and **4.2** has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 4.5 For the avoidance of doubt, the fact that any provision within this Agreement 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 which constitutes a material Default.
- 4.6 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

5. GUARANTEE

- 5.1 Where the Customer has stipulated during the procurement process that the award of this Agreement shall be conditional upon receipt of a Guarantee, then, on or prior to the Commencement Date or on any other date specified by the Customer, the Supplier shall deliver to the Customer:
 - 5.1.1 an executed Guarantee from a Guarantor; and
 - 5.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.
- 5.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in **Clause 5.1** by giving the Supplier notice in writing.
- 5.3 Without prejudice to any right of termination that the Customer may have pursuant to **Clause 39.5 (Termination on Change of Control)**, in the

event of a change of Control of the Supplier such that the Guarantor ceases to Control the Supplier or the Guarantor otherwise ceases to be the Ultimate Parent Undertaking of the Supplier or there is a change in the identity of the Ultimate Parent Undertaking of the Supplier:

5.3.1 whether or not there is an existing executed Guarantee in place, the Customer may require that a new or replacement Guarantee be provided by a person that, as a consequence of the change of Control, Controls the Supplier or who is otherwise the Ultimate Parent Undertaking of the Supplier; and

5.3.2 subject to **Clause 5.4**, the Supplier shall, within twenty (20) Working Days of being so required by the Customer, procure that such new or replacement Guarantor shall:

(a) execute and deliver to the Customer the Guarantee; and

(b) deliver to the Customer either a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee or a certified copy of a document or certificate authorising the signatory on the Guarantee to execute the Guarantee on behalf of the Guarantor in a form acceptable to the Customer (acting reasonably).

(c) For the avoidance of any doubt the Customer shall not be obliged to exercise the rights set out in this **Clause 5.3** to require a replacement Guarantor, or the execution and / or delivery of a replacement Guarantee, within any specified period of time following the change of Control or change in the Ultimate Parent Undertaking of the Supplier, or at all, and shall not be obliged to release any Guarantor from liability under any executed Guarantee unless and until a replacement executed Guarantee is delivered to it in accordance with the foregoing provisions of this **Clause 5.3**.

5.4 If any Guarantor (current or replacement) is not a company incorporated in and subject to the laws of England and Wales, the Supplier shall deliver to the Customer (at the same time as delivery of the executed Guarantee and certified copy board minutes extract) a Legal Opinion from a lawyer or law firm which is:

5.4.1 qualified and registered to practise in the jurisdiction in which the Guarantor is incorporated; and

5.4.2 acceptable to the Customer.

5.4.3 The Legal Opinion must be addressed to the Customer on a full reliance basis and the liability of the lawyer or law firm giving the opinion must not subject to any financial limitation unless otherwise agreed by the Customer in writing.

B. DURATION OF THIS AGREEMENT

6. TERM

6.1 This Agreement shall come into force of the Commencement Date and unless terminated at an earlier date by operation of Law or in accordance

with **Clause 39 (Customer Termination Rights)**, **40 (Supplier Termination Rights)** or **41 (Termination by Either Party)**, terminate:

- (a) at the end of the Initial Term; or
- (b) if the Customer elects to extend the Initial Term by giving the Supplier at least thirty (30) Working Days' notice before the end of the Initial Term, at the end of the Extension Period;
- (c) if the Customer elects to extend any Extension Period by giving the Supplier at least thirty (30) Working Days' notice before the end of an Extension Period, at the end of the final Extension Period,
- (d) provided that the aggregate duration of all Extension Periods shall be no longer than 4 years.

C. PERFORMANCE

7. IMPLEMENTATION PLAN

7.1 Formation of Implementation Plan

7.1.1 The Supplier shall prepare a draft Implementation Plan that:

- (a) contains information at the level of detail necessary to manage the implementation of the Services effectively and as described in **Schedule 2 (Services)****Schedule 4 (Implementation Plan, Key Personnel and Supplier Solution)**;
- (b) is consistent with and includes the Milestones and Milestone Dates;
- (c) is consistent with the outline Implementation Plan set out in **Schedule 4 (Implementation Plan, Key Personnel and Supplier Solution)**; and
- (d) meets such other requirements as the Customer may specify (acting reasonably).
- (e) The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.

7.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within 1 (one) Month of the Commencement Date.

7.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone is Achieved on or before its Milestone Date.

7.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Agreement and report to the Customer on such performance.

7.2 Control of Implementation Plan

- 7.2.1 Subject to **Clause 7.2.2**, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 7.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) 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 Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

7.3 **Rectification of Delay in Implementation**

- 7.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Agreement:
- (a) it shall:
 - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in **Part A of Schedule 4 (Implementation Plan)**, **Clause 7.4 (Delay Payments)** shall apply.

7.4 **Delay Payments**

- 7.4.1 If Delay Payments have been included in **Part A of Schedule 4 (Implementation Plan)** and an applicable Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer such Delay Payments (calculated as set out in **Part A of Schedule 4 (Implementation Plan)**) and the following provisions shall apply:
- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;

- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Agreement to **Clause 39 (Customer Termination Rights)** except **Clause 39.6 (Termination Without Cause)**; or
 - (ii) the delay exceeds the Delay Period Limit, commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
- (d) 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 or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with **Clause 46 (Waiver and Cumulative Remedies)** and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this **Clause 7.4.1** and Delay Payments shall not be subject to or count towards any limitation on liability set out in **Clause 34 (Liability)**.

8. THE SERVICES

8.1 Provision of the Services

8.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Agreement.

8.1.2 The Supplier shall ensure that the Services:

- (a) comply in all respects with any description of the Services in **Schedule 2 (Services)** or elsewhere in this Agreement; and
- (b) are supplied in accordance with the provisions of this Agreement.

8.1.3 The Supplier shall perform its obligations under this Agreement in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;

- (d) the Security Policy;
- (e) the Quality Plans; and
- (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of **Clauses 8.1.3(a) to (e)**.

8.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) subject to **Clause 22.1 (Variation Procedure)**, obtain, and maintain throughout the duration of this Agreement all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) the Supplier Solution and the Software is and shall continue to be COTS based and not bespoke and maintained and supported by the Supplier or applicable third party as COTS (unless otherwise agreed by the Customer);
 - (ii) the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Customer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Customer three (3) Months before the release of any new Supplier Software or Upgrade;
 - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Customer;
 - (v) the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer); and
 - (vi) the Services are fully compatible with any Customer Software, Customer System, Customer Property or Customer Assets described in **Schedule 2 (Services)** (or elsewhere in this Agreement) or otherwise used by the Supplier in connection with this Agreement;

- (d) minimise any disruption to the Sites Services, the ICT Environment and/or the Customer's operations when providing the Services;
- (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
- (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (h) provide the Customer with such assistance as the Customer may reasonably require during the Term in respect of the supply of the Services;
- (i) deliver the Services in a proportionate and efficient manner;
- (j) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and
- (k) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement.

8.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

8.2 Supply of Goods

8.2.1 Where, as part of the Services, the Supplier is to sell Goods to the Customer:

- (a) the relevant Goods and their prices shall be as set out in **Schedule 2 (Services)** and **Schedule 3 (Charging, Payment and Invoicing)** respectively;
- (b) the Supplier shall supply and, where relevant, install the Goods in accordance with **Schedule 2 (Services)** and any applicable manufacturer's specification ("**Relevant Specification**");
- (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship, are of satisfactory quality and conform with the Relevant Specification and remain so for twelve (12) Months after delivery;
- (d) if following inspection or testing, or at any other time within twelve (12) Months of delivery, the Customer considers that the Goods do not conform with **Clause 8.2.1 (c)**, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- (e) without prejudice to any other rights or remedies of the Customer:
 - (i) risk in the Goods shall pass to the Customer at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Customer at the time of payment.

8.3 **Optional Services**

8.3.1 The Customer may require the Supplier to provide any or all of the Optional Services at any time by the Customer giving notice to the Supplier in writing. The Supplier acknowledges that the Customer is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Customer from receiving services that are the same as or similar to the Optional Services from any third party.

8.3.2 Following receipt of the Customer's notice pursuant to **Clause 8.3.1**:

- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Variation Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
- (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
- (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in **Schedule 3 (Charging, Payment and Invoicing)**; and

- (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan, provide the relevant Optional Services.

9. PERFORMANCE OF THE SERVICES

9.1 Delivery of the Services

9.1.1 The Supplier shall provide:

- (a) the Implementation Services from (and including) the Commencement Date; and
- (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

9.2 Location and Manner of Delivery of the Services

9.2.1 Except where otherwise provided in this Agreement the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.

9.2.2 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

9.3 Undelivered Services

9.3.1 In the event that any of the Services are not Delivered in accordance with **Clauses 8.1 (Provision of the Services), 9.1 (Delivery of the Services) and 9.2 (Location and Manner of Delivery of the Services) ("Undelivered Services")**, the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

9.3.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with **Clauses 8.1, (Provision of the Services), 9.1 (Delivery of the Services) and 9.2 (Location and Manner of Delivery of the Services)** and meet the relevant Milestone Date (if any) to be a material Default.

9.4 Software warranty

9.4.1 The Supplier warrants to the Customer that all components of the Software shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with and provide the functions and facilities set out in the relevant specifications and requirements contained in **Schedule 2 (Services)** and Documentation; and
- (c) not infringe any Intellectual Property Rights.

9.5 Obligation to Remedy of Default in the Supply of the Services

9.5.1 Subject to **Clauses 31.9.2 and 31.9.3 (IPR Indemnity)** and without prejudice to any other rights and remedies of the Customer howsoever arising (including under **Clause 36 (Customer Remedies for Default)**), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in **Clauses 8 and 9** within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work.

9.6 Continuing Obligation to Provide the Services

9.6.1 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the provision of the Services, notwithstanding:

- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Agreement;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Customer to pay any Charges,
- (d) unless the Supplier is entitled to terminate this Agreement under **Clause 40.1 (Termination on Failure to Pay)** for failure by the Customer to pay undisputed Charges.

10. STANDARDS AND QUALITY

10.1 The Supplier shall at all times during the Term comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

10.2 If so required by the Customer the Supplier shall develop, within ten (10) Working Days of the Commencement Date, quality plans that ensure that all aspects of the Services 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**"). These shall be delivered to the Customer sufficiently in advance of the Milestone Date applicable to the Milestone to which the Quality Plans relate to enable Achievement of that Milestone by its Milestone Date, taking account of the process set out in **Clause 10**.

10.3 The Supplier shall seek Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.

- 10.4 Throughout the Term, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Services. The adoption of any such new or emergent standard or changes to existing Standards shall be agreed in accordance with the Variation Procedure.
- 10.5 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 10.6 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier.
- 10.7 Following the approval by the Customer of the Quality Plans:
- 10.7.1 the Supplier shall implement all Deliverables in accordance with the Quality Plans; and
- 10.7.2 any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.
- 10.8 The Supplier shall ensure that the Supplier Personnel shall at all times during the Term:
- 10.8.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Agreement;
- 10.8.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
- 10.8.3 obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer.
- 10.9 Where a standard, policy or document is referred to in **Schedule 7, (Standards)** by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

11. TESTING

- 11.1 The Parties shall comply with the provisions of **Schedule 5 (Testing)**.

12. SERVICE LEVELS AND SERVICE CREDITS

- 12.1 The Parties shall comply with the provisions of **Part A (Service Levels and Service Credits) of Schedule 6 (Service Levels, Service Credits and Performance Monitoring)**.
- 12.2 The Supplier shall at all times during the Term provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.

- 12.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in the provisions of **Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring)** including the right to any Service Credits.
- 12.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 12.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
- 12.5.1 the Supplier has in any Service Period accrued Service Credits in excess of the Service Credit Cap;
- 12.5.2 the Service Level Failure:
- (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
 - (c) results in:
 - (i) the corruption or loss of any Customer Data (in which case the remedies under **Clause 32.3.8 (Protection of Customer Data)** shall also be available); and/or
 - (ii) the Customer being required to make a compensation payment to one or more third parties;
- 12.5.3 there is a Critical Service Level Failure; and/or
- 12.5.4 the Customer is otherwise entitled to or does terminate this Agreement pursuant to **Clause 39 (Customer Termination Rights)** except **Clause 39.6 (Termination Without Cause)**.
- 12.6 Not more than once in each Agreement Year the Customer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
- 12.6.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out, for the purposes of this Clause, in **Annex 2 to Part A of Schedule 6: Service Levels, Service Credits and Performance Monitoring**;
- 12.6.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and
- 12.6.3 there is no change to the Service Credit Cap.

13. CRITICAL SERVICE LEVEL FAILURE

- 13.1 On the occurrence of a Critical Service Level Failure the Customer shall have the right to terminate this Agreement (pursuant to **Clause 39.2 (Termination for Material Default)**) and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.
- 13.2 The Supplier:
- 13.2.1 agrees that the application of **Clause 13.1** is commercially justifiable where a Critical Service Level Failure occurs; and
- 13.2.2 acknowledges that it has taken legal advice on the application of **Clause 13.1** and has had the opportunity to price for that risk when calculating the Charges.

14. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 14.1 The Parties shall comply with the provisions of **Schedule 10 (Business Continuity and Disaster Recovery)**.

15. DISRUPTION

- 15.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 15.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Agreement.
- 15.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Agreement.
- 15.4 If the Supplier's proposals referred to in **Clause 15.3** are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Agreement for material Default.
- 15.5 If the Supplier is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business solely caused by the Customer, an appropriate allowance by way of an 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.

16. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

- 16.1 Without prejudice to any other obligations of the Supplier in this Agreement to notify the Customer in respect of a specific Customer Cause or Customer Default (including the notice requirements under **Clause 40.1.1 (Termination on Failure to Pay)**), the Supplier shall notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:

- 16.1.1 the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement; and
- 16.1.2 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
- 16.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

17. CONTINUOUS IMPROVEMENT

- 17.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the provision of the Services in accordance with this **Schedule 17 (Continuous Improvement)**.
- 17.2 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and **Schedule 17 (Continuous Improvement)**.

D. GOVERNANCE

18. CONTRACT MANAGEMENT AND PERFORMANCE MONITORING

- 18.1 The Parties shall comply with the provisions of **Schedule 18 (Contract Management)** in relation to the management and governance of this Agreement.
- 18.2 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the performance monitoring requirements set out in **Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring)**.
- 18.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. Unless the Customer specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 18.4 **Off-shore Working**
 - 18.4.1 The Supplier shall be entitled to provide the Services through a delivery model which utilises both on-shore and off-shore staff. Notwithstanding the foregoing (and subject to **Clause 18.4.2**), the Supplier shall not perform any Service or element of a Service from location outside the UK (that is not an Approved Offshore Location) without obtaining the Customer's prior written approval to do so under **Clause 18.4.4**.
 - 18.4.2 The Supplier shall not be entitled to provide any part of the Services from location outside the UK until either:
 - (a) the Customer has gained approval for offshoring information in accordance with the CO Offshoring Policy

Document. The Customer may request the Supplier to provide any information required to support the approvals process for offshoring information; or

- (b) the Customer has confirmed in writing to the Supplier that approval for offshoring information in accordance with the CO Offshoring Policy Document, is not required.

18.4.3 The Supplier shall provide the Customer with any information required to allow the Customer pursue approval for offshoring information in accordance with **Clause 18.4.2**.

18.4.4 If the Supplier wishes to perform any Service or element of a Service from a location outside the UK that is not an Approved Offshore Location it must:

- (a) provide such information that the Customer requests; and
- (b) undertake and successfully pass the requirements of the Customer's Risk Assessment,

18.4.5 in relation to that offshore location. If the Customer's Risk Assessment is successful, and the Customer's consent is given in relation to that offshore location it will become or remain (as applicable) an Approved Offshore Location.

19. REPRESENTATIVES

- 19.1 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 19.2 The initial Supplier Representative shall be the person named as such in **Part C of Schedule 4 (Key Personnel)**. Any change to the Supplier Representative shall be agreed in accordance with **Clause 26 (Supplier Personnel)**.
- 19.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

20. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 20.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer. Without prejudice to the generality of the foregoing the Supplier shall:
 - 20.1.1 maintain and retain the Open Book Data;
 - 20.1.2 disclose and allow the Customer and/or any Auditor access to the Open Book Data; and

20.1.3 maintain and update the Financial Model as required by the Customer such that it continues to provide sufficient detail for the Customer to have visibility of all the costs to be incurred by the Supplier and of the Charges to be paid in respect of the provision of the Services. Any amendment to the Financial Model from time to time shall require Approval.

20.2 The Supplier shall:

20.2.1 keep the records and accounts referred to in **Clause 20.1** in accordance with Good Industry Practice and Law; and

20.2.2 afford any Auditor access to the records and accounts referred to in **Clause 20.1** at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in **Clause 20.1**, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Agreement including for the following purposes to:

- (a) verify the accuracy of the Charges and any other amounts payable by the Customer under this Agreement (and proposed or actual variations to them in accordance with this Agreement);
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
- (c) verify the Open Book Data;
- (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened Breach of Security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;

- (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- (k) review any Performance Monitoring Reports provided under Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Agreement;
- (m) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (n) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (o) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (p) review the Supplier's compliance with the Standards;
- (q) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
- (r) review the integrity, confidentiality and security of the Customer Data.

20.3 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(s) is outside of the control of the Customer.

20.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

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

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

20.4.3 access to the Supplier Personnel.

20.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under

this **Clause 20**, unless the audit reveals a 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.

21. EARLY WARNING

21.1 Without prejudice to any other provision of this Agreement, the Supplier shall, and the Customer may, give an early warning by notifying the other as soon as possible after either becomes aware of any:

21.1.1 material detrimental change in the financial standing of the Supplier, including:

- (a) the Supplier issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier;
- (c) the Supplier committing a material breach of covenant to its lenders;
- (d) a Key Subcontractor notifying the Customer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (e) the credit rating of the Supplier with any established and reputable ratings agency dropping below the applicable level as at the Commencement Date; or

21.1.2 other matter which could:

- (a) increase or reduce the Charges;
- (b) adversely affect implementation and/or the performance of the Services;
- (c) impair the Customer's ability to use the IT Environment or otherwise adversely affect the Customer's business operations; or
- (d) lead to a Service Failure or likely Service Failure.

21.2 If the Supplier or the Customer considers that a matter notified is sufficiently important to require an early warning meeting, it may instruct the other to attend such a meeting.

21.3 At an early warning meeting those who attend will cooperate in:

21.3.1 making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced, including, where required by the Customer, preparation by the Supplier for Approval by the Customer of a remediation plan in respect thereof;

21.3.2 seeking solutions that will bring advantage to the Parties; and

21.3.3 deciding upon actions which they will take and who, in accordance with this Agreement, will take them.

21.4 The Supplier will:

21.4.1 record the proposals considered and decisions taken at an early warning meeting and will give a copy of their record to the Customer; and

21.4.2 comply with the provisions of any remediation plan Approved by the Customer as referred to in **Clause 21.3.1**.

22. CHANGE

22.1 Variation Procedure

22.1.1 Subject to the provisions of this **Clause 22.1** and of **Schedule 3 (Charging, Payment and Invoicing)**, either Party may request a variation to this Agreement provided that such variation does not amount to a material change of this Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

22.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.

22.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:

- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Agreement.
- (b) a detailed breakdown of the cost of implementing the proposed Variation;
- (c) a detailed breakdown of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party (any increase or decrease in the Charges must be reasonable and proportionate and calculated in a manner consistent with the Financial Model);
- (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
- (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.

22.1.4 The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.

22.1.5 Subject to **Clause 22.1.4**, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Services and the proposed Variation.

22.1.6 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; and/or
- (b) the Parties are unable to agree a change to the Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Customer may:

- (c) agree to continue to perform its obligations under this Agreement without the Variation; or
- (d) terminate this Agreement with immediate effect, except where the Supplier has already fulfilled part or all of the Services in accordance with this Agreement or where the Supplier can show evidence of substantial work being carried out to fulfil the Services, 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.

22.1.7 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Agreement.

22.2 Legislative Change

22.2.1 The Supplier shall neither be relieved of its obligations under this Agreement nor be entitled to an increase in the Charges as the result of a:

- (a) General Change in Law;
- (b) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

22.2.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in **Clause 22.2.1(b)**), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Customer with evidence:

- (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
- (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of **Clause 17 (Continuous Improvement)**, has been taken into account in amending the Charges.

22.2.3 Any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in **Clause 22.2.1(b)**) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

23. CHARGES AND PAYMENT

23.1 Charges

23.1.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Customer shall pay the undisputed Charges in accordance with the pricing and payment profile and the invoicing procedure in **Schedule 3 (Charging, Payment and Invoicing)**.

23.1.2 Except as otherwise expressly provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.

23.1.3 If the Customer fails to pay any undisputed Charges properly invoiced under this Agreement the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

23.2 VAT

23.2.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.

23.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this **Clause 23.2 (VAT)** shall be paid in cleared funds 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.

23.3 Retention and Set Off

23.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Customer.

23.3.2 If the Customer wishes to exercise its right pursuant to **Clause 23.3.1** it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Charges.

23.3.3 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 obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

23.4 Foreign Currency

23.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (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.

23.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with **Clause 23.4.1** by the Supplier.

23.5 Income Tax and National Insurance Contributions

23.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.

23.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in **Schedule 1 (Definitions)**, and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure

that its contract with the Worker includes the following requirements:

- (a) that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
- (b) that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;
- (c) that the Customer may, at any time during Term, request that the Worker provide information which demonstrates how the Worker complies with the above requirements (a) and (b), or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- (d) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide information requested by the Customer within the time specified by the Customer; and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with requirements (a) or (b) or confirms that the Worker is not complying with those requirements; and.

23.5.3 that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

24. PROMOTING TAX COMPLIANCE

24.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

24.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and

24.1.2 promptly provide to the Customer:

- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

24.2 In the event that the Supplier fails to comply with this **Clause 24** and/or does not provide details of proposed mitigating factors which in the

reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Agreement for material Default.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

25. KEY PERSONNEL

- 25.1 The Parties have agreed to the appointment of the Key Personnel. **Part C of Schedule 4 (Key Personnel)** lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Commencement Date.
- 25.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Period.
- 25.3 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 25.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under **Schedule 11 (Exit Management)**) unless:
 - 25.4.1 requested to do so by the Customer;
 - 25.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 25.4.3 the person’s employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - 25.4.4 the Supplier obtains the Customer’s prior written consent (such consent not to be unreasonably withheld or delayed).
- 25.5 The Supplier shall:
 - 25.5.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 25.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 25.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel’s employment contract this will mean at least three (3) Months’ notice;
 - 25.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
 - 25.5.5 ensure that any replacement for a Key Role:

- (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
- (b) is fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.

25.5.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Period without Approval.

25.6 The Customer may 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.

26. SUPPLIER PERSONNEL

26.1 Supplier Personnel

26.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
 - (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in **Schedule 8 (Security)**; and
 - (iv) obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer.
- (c) subject to **Schedule 16 (Staff Transfer)**, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier

Personnel have been removed or are unavailable for any reason whatsoever;

- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Expiry Date.

26.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

26.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

26.1.4

27. SUPPLY CHAIN RIGHTS AND PROTECTION

27.1 Appointment of Sub-Contractors

27.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Agreement in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Agreement.

27.1.2 Prior to sub-contacting any of its obligations under this Agreement the Supplier shall provide the Customer with:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.

27.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to **Clause 27.1.2**, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract; and
- (b) any further information reasonably requested by the Customer.

27.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to **Clause 27.1.2** (or, if later, receipt of any further information requested pursuant to **Clause 27.1.3**), object to the appointment of the relevant Sub-Contractor they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Customer under this Agreement;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Sub-Contractor employs unfit persons,

in which case, the Supplier shall not proceed with the proposed appointment.

27.1.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to **Clause 27.1.2**; and
 - (ii) any further information requested by the Customer pursuant to **Clause 27.1.3**; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Customer in accordance with **Clause 27.2 (Appointment of Key Sub-Contractors)**.

the Supplier may proceed with the proposed appointment.

27.2 Appointment of Key Sub-Contractors

27.2.1 The Customer has consented to the engagement of the Key Sub-Contractors listed in **Section 3 of Part D of Schedule 4 (Supplier Solution)**.

27.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Customer (the decision to consent or not will to be unreasonably withheld or delayed). The Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;

- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

27.2.3 Except where the Customer has given their prior written consent under **Clause 27.2.1**, the Supplier shall ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
- (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in **Clauses 32.1 (Security Requirements), 32.3 (Protection of Customer Data) and 32.7 (Protection of Personal Data)**;
 - (ii) FOIA requirements set out in **Clause 32.6 (Freedom of Information)**;
 - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in **Clause 8.1.4(j) (Provision of Services)**;
 - (iv) the keeping of records in respect of the Services being provided under the Key Sub-Contract including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in **Clause 20 (Records, Audit Access & Open Book Data)**;
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under **Clauses 39 (Customer Termination Rights), 41 (Termination by Either Party) and 43 (Consequences of Expiry or Termination)** of this Agreement ;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub- all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;

- (h) [a provision, where a provision in Schedule 16 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be].

27.3 Supply Chain Protection

27.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring that any invoices submitted by a Subcontractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed
- (b) a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (c) requiring the Sub-Contractor to include any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above.
- (d) Also, any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

27.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within the Performance Monitoring Reports required under **Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring)** a summary of its compliance with this **Clause 27.3.2**, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

27.3.3 Notwithstanding any provision of **Clauses 32.4 (Confidentiality)** and **33 (Publicity and Branding)** if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

27.4 Termination of Sub-Contracts

27.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant any of the termination events in **Clause 39 (Customer Termination Rights)** except **Clause 39.6 (Termination Without Cause)**; and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) Months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

27.5 Competitive Terms

27.5.1 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 materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Customer may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
- (b) subject to **Clause 27.4 (Termination of Sub-Contracts)**, enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

27.5.2 If the Customer exercises the option pursuant to **Clause 27.5.1**, then the Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

27.5.3 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Customer shall make the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and

- (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

27.6 Advertising Sub-contract Opportunities

27.6.1 The Supplier shall:

- (a) subject to **Clauses 27.6.3 and 27.6.4**, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of twenty five thousand pounds (£25,000) that arise during the Term;
- (b) within ninety (90) days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- (c) monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at **Clause 27.6.1(c)** to the Customer in the format and frequency as reasonably specified by the Customer; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

27.6.2 Each advert referred to in **Clause 27.6.1** above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

27.6.3 The obligation at **Clause 27.6.1** shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

27.6.4 Notwithstanding **Clause 27.6.1** the Customer may, by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

27.7 SMEs

27.7.1 For all Sub-Contractors who are SMEs (as defined by the Customer from time to time) the Supplier shall report to the Customer each quarter from the Commencement Date until the Expiry Date and then on each anniversary thereof until all SME accounts are finalised:

- (a) the name of the SME;
- (b) the class of the SME (medium, small or micro);
- (c) the value of the contract undertaken by the SME;
- (d) the Monthly amounts paid to the SME in the quarter; and
- (e) the aggregated value paid to the SME since the Commencement Date.

27.7.2 The Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Customer thirty days prior to the end of each financial year of the Customer, in accordance with any format and guidance issued by the Customer from time to time.

27.8 Retention of Legal Obligations

27.8.1 Notwithstanding the Supplier's right to sub-contract pursuant to this **Clause 27 (Supply Chain Rights and Protection)**, 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.

G. PROPERTY MATTERS

28. CUSTOMER PREMISES

28.1 Licence to occupy Customer Premises

28.1.1 Any Customer Premises 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 this Agreement. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Agreement and in accordance with **Schedule 11 (Exit Management)**.

28.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Agreement and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.

28.1.3 Save in relation to such actions identified by the Supplier in accordance with **Clause 2.1.3(a) (Due Diligence)** and set out in this Agreement, should the Supplier require modifications to the Customer 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 28.1.3** without undue delay. Ownership of such modifications shall rest with the Customer.

28.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel 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.

28.1.5 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 the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

28.2 Security of Customer Premises

28.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.

28.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

29. CUSTOMER PROPERTY

29.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer 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 Customer Property.

29.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.

29.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer 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 Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

29.4 The Customer 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.

29.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Agreement and for no other purpose without Approval.

29.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.

- 29.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Default. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

30. MAINTENANCE OF THE ICT ENVIRONMENT

- 30.1 If specified by the Customer the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**").
- 30.2 The Supplier shall provide to the Customer a draft Maintenance Schedule for Approval within such period of time and in accordance with any other instructions of the Customer as specified in this Agreement.
- 30.3 Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 30.4 The Supplier shall give as much notice as is reasonably practicable to the Customer prior to carrying out any Emergency Maintenance.
- 30.5 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services 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 Services.

H. INTELLECTUAL PROPERTY AND INFORMATION

31. INTELLECTUAL PROPERTY RIGHTS

31.1 Allocation of title to IPR

31.1.1 Save as expressly granted elsewhere under this Agreement:

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including in the:
 - (i) Supplier Software;
 - (ii) Project Specific IPR;
 - (iii) Specially Written Software;
 - (iv) Supplier Background IPR;
 - (v) Third Party Software; and
 - (vi) Third Party IPR;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including in the:

- (i) Customer Software;
- (ii) Customer Background IPR; and
- (iii) Customer Data.

31.1.2 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 31.1.1**, 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).

31.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

31.2 The Supplier will not include any Supplier Background IPRs or Third Party IPR in any release or Deliverable the Intellectual Property Rights in which are to be assigned to the Customer under this Agreement.

31.3 Licences granted by the Supplier: Specially Written Software, Project Specific IPR, Supplier Software and Supplier Background IPR

31.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive and (in the case of **Clauses 31.3.1(a), (b) and (c)**) irrevocable licence to use:

- (a) the Source Code and the Object Code of Specially Written Software for any purpose including the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate);
- (b) 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 (together the **“Software Supporting Materials”**);
- (c) the Project Specific IPR for any purpose including the right to copy, adapt, publish (including on the IT Environment) and distribute the Project Specific IPR;
- (d) the Supplier Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer'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); and
- (e) the Supplier Background IPR and the Documentation for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function.
- (f) The Supplier:

- (g) shall inform the Customer of all Specially Written Software and any element of Project Specific IPR that constitutes a modification or enhancement to Supplier Software or Third Party Software;
- (h) shall deliver to the Customer the Specially Written Software and the software element of Project Specific IPR in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Satisfaction Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer;
- (i) without prejudice to **Clause 31.6 (Third Party IPR and Third Party Software)**, shall provide full details to the Customer of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs; and
- (j) acknowledges and agrees that the ownership of the media referred to in **Clause 31.3.1(h)** shall vest in the Authority upon their receipt by the Authority.

31.3.2 At any time during the Term or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software under **Clause 31.3.1(d)** or the Supplier Background IPR under **Clause 31.3.1(e)** by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a material breach by the Customer of the terms of **Clause 31.3.1(d)** or **31.3.1(e)** (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

31.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to **Clause 31.3.2**, the Customer shall:

- (a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and

- (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Software. and/or Supplier Background IPR.

31.4 Customer's right to sub-license

31.4.1 The Customer may sub-license:

- (a) the rights granted under **Clauses 31.3.1(d)** and **31.3.1(e)** to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Customer; and
 - (ii) the sub-licence only authorises the third party to use the rights licensed in **Clauses 31.3.1(d)** and **31.3.1(e)** for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function;
- (b) the rights granted under **Clauses 31.3.1(d)** and **31.3.1(e)** to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and / or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer; and
- (c) the rights granted under **Clauses 31.3.1(a), 31.3.1(b) and 31.3.1(c)** without restriction.

31.5 Customer's right to assign/novate licences

31.5.1 The Customer:

- (a) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to **Clauses 31.3.1(d)** and **31.3.1(e)** to:
 - (i) a Central Government Body; or
 - (ii) 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 Customer;
- (b) where any change in the legal status of the Customer which means that it ceases to be a public body shall not affect the validity of any licence granted in **Clauses 31.3.1(d)** or **31.3.1(e)**. If the Customer ceases to be a public body the successor body to the Customer shall still be entitled to the benefit of the licences granted in **Clauses 31.3.1(d)** and **31.3.1(e)**; and

- (c) may freely assign, novate or otherwise transfer its rights and obligations under the licences granted in **Clauses 31.3.1(a), 31.3.1(b) and 31.3.1(c)**.

31.5.2 If a licence granted in either **Clause 31.3.1(d)** or **31.3.1(e)** is novated under **Clause 31.5.1(a)**, the rights acquired by the transferee shall not extend beyond those previously enjoyed by the Customer.

31.6 **Third Party IPR and Third Party Software**

31.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in **Clauses 31.3.1(d) and 31.3.1(e), Clause 31.4.1(a) (Customer's right to sub-license) and Clause 31.5.1(a) (Customer's right to assign/novate licences)**. If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in **Clauses 31.3.1(d) and 31.3.1(e): Supplier Software and Supplier Background IPR), Clause 31.4.1(a) (Customer's right to sub-license) and Clause 31.5.1(a) (Customer's right to assign/novate licences)** in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.

31.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than such software is usually made available.

31.7 **Licence granted by the Customer**

31.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Services in accordance with this Agreement including the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in **Clause 32.4 (Confidentiality)**; and
- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

31.7.2 The Customer gives no warranty as to the suitability of any IPRs licensed to the Supplier hereunder. Any such licence:

- (a) may include the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part thereof) provided that any such Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as in **Clause 32.4 (Confidentiality)** and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
- (b) is granted solely to the extent necessary for the provision of the Services in accordance with this agreement. The Supplier will ensure that the Subcontractors do not use the licensed materials for any other purpose.

31.7.3 Subject to the above Clause, the Supplier will ensure that no unlicensed software or Open Source Software (other than the Open Source Software approved by the Customer and specified in **Schedule 9 (Software)**) is interfaced with or embedded within any Customer Software or Deliverable.

31.8 Termination of licenses

31.8.1 Subject to **Clauses 31.3.2 and/or 31.3.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR)**, all licences granted pursuant to this **Clause 31 (Intellectual Property Rights)** (other than those granted pursuant to **Clause 31.6.2 (Third Party IPR and Third Party Software)** and **31.7.1 (Licence granted by the Customer)**) shall survive the Expiry Date.

31.8.2 The Supplier shall, if requested by the Customer in accordance with **Schedule 11 (Exit Management)**:

- (a) grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software (other than Third Party Software which is commercial off-the-shelf software) on terms equivalent to those set out in **Clauses 31.3.1(d) and 31.3.1(e)** subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier; and
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party Software which is commercial off-the-shelf software on terms no less favourable than those on which such software is usually made commercially available by the relevant third party.

31.8.3 The licence granted pursuant to **Clause 31.7.1 (Licence granted by the Customer)** and any sub-licence granted by the Supplier in accordance with **Clause 31.7.1 (Licence granted by the Customer)** shall terminate automatically on the Expiry Date and the Supplier shall:

- (a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);
- (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six (6) Months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Software, Customer Background IPR and/or Customer Data.

31.9 IPR Indemnity

31.9.1 The Supplier shall during and after the Term, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

31.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

31.9.3 If the Supplier elects to procure a licence in accordance with **Clause 31.9.2(a)** or to modify or replace an item pursuant to **Clause 31.9.2(b)**, but this has not avoided or resolved the IPR Claim, then:

- (a) the Customer may terminate this Agreement by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in **Clause 31.9.1**, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services and software including the additional costs of procuring, implementing and maintaining the substitute items.

31.9.4 The provisions of **Clauses 31.9.1 to 31.9.3** (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in a manner not reasonably to be inferred from the description of the Services in **Schedule 2 (Services)** or the provisions of this Agreement .

31.9.5 The Customer agrees that:

- (a) it will notify the Supplier in writing of any IPR Claim;
- (b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- (c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

31.9.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Customer's Approval (not to be unreasonably withheld or delayed).

31.10 **Escrow**

31.10.1 The Supplier shall, and shall procure that each owner of the Deposited Software shall, within not less than ten (10) Working Days of the Operational Service Commencement Date or at such other time as the Customer may require, deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with the National Computing Centre ("NCC") or its equivalent on the basis of the their standard single licensee software escrow agreement as revised from time to time (subject to acceptance by the Customer). The Supplier shall ensure that (and shall procure that each owner of the Deposited Software shall ensure that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Supplier shall pay, or shall procure that each owner of Deposited Software pays, the initial storage fees and the annual fees under the escrow agreement and the Customer shall pay the release fees.

31.10.2 Where the Supplier is unable to procure compliance with the provisions of **Clause 31.10.1** in respect of any Third Party Software that is Deposited Software, it shall provide the Customer with written evidence of its inability to comply with these provisions and shall agree with the Customer a suitable alternative to escrow that affords the Customer the nearest equivalent protection. The Supplier shall be excused from its obligations under **Clause 31.10.1** only to the extent that the Parties have agreed on a suitable alternative.

31.10.3 In circumstances where the Customer obtains the release of the Source Code from escrow, the Supplier hereby grants (and shall procure that any owner of Deposited Software grants) to the Customer a perpetual, assignable, royalty-free, irrevocable and non-exclusive licence to use and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services or the Customer's normal business undertakings. For the avoidance of doubt the licence granted under this **Clause 31.10.3** shall survive the termination or expiry of the Agreement and cannot be terminated by the Supplier or its assignees.

31.11 Software as a Service

31.11.1 Where the Parties agree in writing that any Software shall be provided by way of Software as a Service, or where it is indicated under **Schedule 9 (Software)** that any Software shall be provided by way of Software as a Service, the Customer acknowledges that, as a consequence:

- (a) except for Specially Written Software:
 - (i) it will not be provided with a physical copy of such Software; and
 - (ii) use of such Software is restricted to use by way of Software as a Service;
- (b) any reference to a perpetual licence granted to the Customer under this Agreement in relation to Software to be provided as Software as a Service in accordance with this **Clause 31.11** shall be construed as a licence for the Term of this Agreement only;
- (c) **Clause 31.8.2(a) (Termination of licences)** shall not apply in relation to such Software;
- (d) the provisions of **Clause 31.8.2(b) (Termination of licences)** shall apply in relation to all such Software (not just Third Party Software) and be modified such that any reference to a requirement to grant a licence shall be construed as an obligation to provide a right to access and use the same by way of Software as a Service for a minimum of two years following the termination or expiry of this Agreement on a paid for basis on terms no less favourable than those on which such Software is usually

made commercially available by the Supplier or applicable third party

31.11.2 and the provisions of this **Clause 31** shall be construed accordingly; and

(a) in respect of any Third Party Software for which, pursuant to **Clause 31.6.1(b)**, the Customer has approved licence terms which are not royalty or payment free, the Supplier will pay all royalties and any other fees due and payable pursuant to such licence terms during the Term on behalf of the Customer.

31.11.3 The Supplier agrees to provide the Customer with all software keys, access codes and/or other login requirements as necessary to access and use any Software provided by way of Software as a Service.

32. SECURITY AND PROTECTION OF INFORMATION

32.1 Security Requirements

32.1.1 The Supplier shall comply with the Security Policy and the requirements of **Schedule 8 (Security)** including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

32.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.

32.1.3 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 propose a Variation to 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 Charges shall then be subject to the Variation Procedure.

32.1.4 Until and/or unless a change to the Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

32.1.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance; as amended from time to time and currently available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

32.2 Malicious Software

32.2.1 The Supplier shall, as an enduring obligation throughout the Term use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check

for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

32.2.2 Notwithstanding **Clause 32.2.1**, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

32.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of **Clause 32.2.2** shall be borne by the Parties as follows:

- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in **Clause 32.2.1**) 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
- (b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in **Clause 32.2.1**) or the Customer Data (whilst the Customer Data was under the control of the Customer).

32.3 Protection of Customer Data

32.3.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

32.3.2 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 Agreement or as otherwise Approved by the Customer.

32.3.3 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 (if any) specified in this Agreement and in any event as specified by the Customer from time to time in writing.

32.3.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

32.3.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered

to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

32.3.6 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 and the Security Management Plan (if any).

32.3.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

32.3.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:

- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in **Schedule 10 (Business Continuity and Disaster Recovery)** or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
- (b) 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 **Schedule 10 (Business Continuity and Disaster Recovery)** or as otherwise required by the Customer.

32.4 Confidentiality

32.4.1 For the purposes of this **Clause 32.4**, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

32.4.2 Except to the extent set out in this **Clause 32.4** or where disclosure is expressly permitted elsewhere in this Agreement the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

32.4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that **Clause 32.6 (Freedom of Information)** shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

32.4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

32.4.5 Subject to **Clauses 32.4.2** and **32.4.7**, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement; and

- (b) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

32.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this **Clause 32.4.5**, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

32.4.7 The Customer may disclose the Confidential Information of the Supplier:

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in **Clause 32.4.7(a)** (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,
- (g) and for the purposes of the foregoing, references to disclosure **32.4.5** on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause.

32.4.8 Nothing in this **Clause 32.4** shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

32.4.9 In the event that the Supplier fails to comply with **Clauses 32.4.2** to **32.4.5**, the Customer reserves the right to terminate this Agreement for material Default.

32.5 Transparency

32.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any Transparency Reports under it ("**Transparency Information**") is not

Confidential Information and shall be made available in accordance with procurement policy note 01/17 (<https://www.gov.uk/government/publications/procurementpolicy-note-0117-update-to-transparency-principles>) and the 40 Transparency Principles referred to therein. The Customer shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

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

32.5.3 The Supplier shall:

- (a) assist and cooperate with the Customer to enable the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with **Clause 32.5.4 to 32.5.7**;
- (b) provide information to assist the Customer in responding to queries from the public as required by the PPN01/17 and requested by the Customer; and
- (c) supply the Customer with financial data relating to this Agreement and any Sub-contract in the form and at the times specified in the PPN01/17.

32.5.4 Within three (3) Months of the Commencement Date the Supplier shall provide to the Customer for its Approval (such Approval not to be unreasonably withheld or delayed) draft reports as set out below (once approved, the **“Transparency Reports”**):

Title	Content	Format	Frequency
Performance Management	List of KPIs and performance levels achieved against these] [Plans for management of underperformance	Portable digital format (and any other ‘open’ formats as specified under the government policies from time to time)	Monthly
Charges	[Amount paid to the Supplier]		Monthly
Major Sub-Contractors	[Identities and roles of the Key Sub-contractors]		Annual

- 32.5.5 If the Customer rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further Approval by the Customer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.
- 32.5.6 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in **Clause 32.5.4**.
- 32.5.7 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

32.6 Freedom of Information

32.6.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is 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 reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

32.6.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

32.7 Protection of Personal Data

- 32.7.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in **Schedule 15 (Data Processing)** by the Customer and may not be determined by the Supplier.
- 32.7.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 32.7.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks. Including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 32.7.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) Process that Personal Data only in accordance with **Schedule 15 (Data Processing)** unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement) an in particular **Schedule 15 (Data Processing)**;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they;

- (A) are aware of and comply with the Supplier's duties under this **Clause 32**;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not make a Restricted Transfer unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (any copies of it) to the Customer on termination of this Agreement unless the Supplier is required by Law to retain the Personal Data.

32.7.5 Subject to **Clause 32.7.6** the Supplier shall notify the Customer immediately if it;

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligation under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory body in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

32.7.6 The Supplier's obligation to notify under **Clause 32.7.5** shall include the provision of further information to the Customer in phases, as details become available.

32.7.7 Taking into account the nature of processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under **Clause 32.7.5** (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonable requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following a Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

32.7.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless;

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer determines the processing includes special categories of data or Personal Data relating to criminal convictions and offences, each as referred to in Data Protection Legislation; and
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

32.7.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

- 32.7.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 32.7.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this **Clause 32.7** such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 32.7.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 32.7.13 The Customer may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 32.7.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance of the Information Commissioner's Office.

33. PUBLICITY AND BRANDING

- 33.1 The Supplier shall not:
- 33.1.1 make any press announcements or publicise this Agreement in any way; or
 - 33.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,
 - 33.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).
- 33.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods, Services, Equipment, the Supplier System and the Customer System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

I. LIABILITY AND INSURANCE

34. LIABILITY

34.1 Unlimited Liability

34.1.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

34.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in **Clause 31.9 (IPR Indemnity)** and in each case whether before or after the making of a demand pursuant to the indemnity therein.

34.2 Financial Limits

34.2.1 Subject to **Clause 34.1.1 (Unlimited Liability)**, the Supplier's total aggregate liability:

- (a) in respect of all Service Credits incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;
- (b) subject to **Clause 34.2.1(c)** in relation to all other Losses incurred by the Customer under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Commencement Date to the end of the first Agreement Year the higher of [one million pounds (£1,000,000)] or a sum equal to one hundred and twenty five per cent (125%) of the Estimated Year 1 Charges; and
 - (ii) in relation to any Defaults occurring in each subsequent Agreement Year, the higher amount of [one million pounds (£1,000,000)] or a sum equal to one hundred and twenty-five per cent (125%) of the Agreement Charges payable to the Supplier under this Agreement in the previous Agreement Year; and
- (c) in respect of any breach of its obligations under **Clause 32.7** shall be limited to ten million pounds (£10,000,000).

34.2.2 Subject to **Clauses 34.1.1 (Unlimited Liability)** and **34.2.1 (Financial Limits)** and without prejudice to its obligation to pay the undisputed Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Default shall be limited to:

- (a) in relation to any Customer Default occurring from the Commencement Date to the end of the first Agreement Year, a sum equal to the Estimated Year 1 Charges;

- (b) in relation to any Customer Default occurring in each subsequent Agreement Year that commences during the remainder of the Term, a sum equal to the Charges payable to the Supplier under this Agreement in the previous Agreement Year; and
- (c) in relation to any Customer Default occurring in each Agreement Year that commences after the end of the Term, a sum equal to the Charges payable to the Supplier under this Agreement in the last Agreement Year commencing during the Term.

34.3 Non-recoverable Losses

34.3.1 Subject to **Clause 34.1.1 (Unlimited Liability)** neither Party shall be liable to the other Party for any:

- (a) indirect, special or consequential Loss;
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

34.4 Recoverable Losses

34.4.1 Subject to **Clause 34.2.1 (Financial Limits)**, and notwithstanding **Clause 34.3.1 (Non-recoverable Losses)**, the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine, penalty or costs incurred by the Customer pursuant to Law.

34.5 Miscellaneous

34.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

34.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under **Clause 34.2.1 (Financial Limits)**.

35. INSURANCE

- 35.1 Without limitation to the generality of **Clause 35.2**, the Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in **Schedule 19 (Insurance Requirements)**. The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 35.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 35.3 The Supplier shall effect and maintain the policy or policies of insurance referred to in **Clauses 35.1** and **35.2** above for six (6) years after the Expiry Date.
- 35.4 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in **Clauses 35.1** and **35.2** 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.
- 35.5 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this **Clause 35**, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 35.6 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Agreement. 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 in relation to the performance of its obligations under this Agreement.
- 35.7 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.

J. REMEDIES AND RELIEF

36. CUSTOMER REMEDIES FOR DEFAULT

36.1 Remedies

36.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under **Schedule 6 (Service Levels, Service Credits and Performance Monitoring)**) and subject to the exclusive financial remedy provisions in **Clause 12.5 (Service Levels and Service Credits)**, and **7.4.1(b) (Delay Payments)**, if the Supplier commits any Default of this Agreement then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled, in accordance with the Customer's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Agreement;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Agreement (whereupon the relevant provisions of **Clause 42 (Partial Termination, Suspension and Partial Suspension)** shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services; or
 - (iii) without terminating or suspending the whole of this Agreement terminate or suspend this Agreement in respect of part of the provision of the Services only (whereupon the relevant provisions of **Clause 42 (Partial Termination, Suspension and Partial Suspension)** shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;

36.1.2 Where the Customer exercises any of its step-in rights under **Clauses 36.1.1(c)(ii) or 36.1.1(c)(iii)**, the Customer shall have the right to 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 and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Replacement Services.

36.2 Rectification Plan Process

36.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to **Clause 36.1.1(c)(i)**:

- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

36.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with **Schedule 12 (Dispute Resolution Procedure)**.

36.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Default; and/or
- (d) will rectify the Default but in a manner which is unacceptable to the Customer.

36.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.

36.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

37. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

37.1 If the Supplier has failed to:

37.1.1 Achieve a Milestone by its Milestone Date;

37.1.2 provide the Services in accordance with the Service Levels;

37.1.3 comply with its obligations under this Agreement,

(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in **Clause 16 (Supplier Notification of Customer Cause)**):

- (a) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Agreement pursuant to **Clause 39 (Customer Termination Rights)** except **Clause 39.6 (Termination Without Cause)**;
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits; and

- (ii) the Supplier shall be entitled to invoice for the Charges for the provision of the relevant Services affected by the Customer Cause,

in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

37.2 In order to claim any of the rights and/or relief referred to in **Clause 37.1**, the Supplier shall:

37.2.1 comply with its obligations **under Clause 16 (Notification of Customer Cause)**; and

37.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a “**Relief Notice**”) setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Agreement; and
- (c) the relief claimed by the Supplier.

37.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.

37.4 Without prejudice to **Clauses 9.6 (Continuing obligation to provide the Services)**, if a Dispute arises as to:

37.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

37.4.2 the nature and/or extent of the relief claimed by the Supplier,
either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

37.5 Any Variation that is required to the Implementation Plan or to the Charges pursuant to this **Clause 37** shall be implemented in accordance with the Variation Procedure in **Clause 22**.

38. FORCE MAJEURE

38.1 Subject to the remainder of this **Clause 38** (and, in relation to the Supplier, subject to its compliance with its obligations in **Clause 14 (Business Continuity and Disaster Recovery)**), a Party may claim relief under this **Clause 38** from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent,

Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 38.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 38.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this **Clause 38** to the extent that consequences of the relevant Force Majeure Event:
- 38.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services and compliance with the BCDR Plan, but the Supplier has failed to do so; and/or
- 38.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 38.4 Subject to **Clause 38.5**, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 38.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 38.6 Where, as a result of a Force Majeure Event:
- 38.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
- (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Default arising as a result of such failure;
- 38.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
- (a) the Customer shall not be entitled:
- (i) during the continuance of the Force Majeure Event to exercise its step-in rights under **Clause 36.1.1(b)** and

36.1.1(c) (Customer Remedies for Default) as a result of such failure;

(ii) to receive Delay Payments pursuant to **Clause 7.4 (Delay Payments)** to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and

(iii) to receive Service Credits or claim damages as compensation for a Critical Service Level Failure pursuant to **Clause 13 (Critical Service Level Failure)** to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and

(b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

38.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

38.8 Relief from liability for the Affected Party under this **Clause 38** shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under **Clause 38.7**.

K. TERMINATION AND EXIT MANAGEMENT

39. CUSTOMER TERMINATION RIGHTS

39.1 Termination in Relation to Guarantee

39.1.1 Where this Agreement is conditional upon the Supplier has procured a Guarantee pursuant to **Clause 5 (Guarantee)**, the Customer may terminate this Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Guarantor withdraws the Guarantee for any reason whatsoever;
- (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
- (c) an Insolvency Event occurs in respect of the Guarantor;
- (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer, or

- (e) the Supplier fails to provide the documentation required by **Clause 5.1** by the date so specified by the Customer.

39.2 Termination on Material Default

39.2.1 The Customer may terminate this Agreement for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to **Clause 4.2.5 (Representations and Warranties)** is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Agreement Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Agreement Year as set out in **Clauses 34.2.1(a) and 34.2.1(b) (Liability)**;
- (d) the Customer expressly reserves the right to terminate this Agreement for material Default, including pursuant to any of the following **Clauses 13.1 (Critical Service Level Failure), 15.4 (Disruption), 20.5 (Records, Audit Access and Open Book Data), 24 Promoting Tax Compliance, 32.4.9 (Confidentiality) or 48.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Schedule 16 (Staff Transfer)** where applicable;
- (e) the Supplier commits any material Default of this Agreement which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process; and/or
- (g) the Supplier fails to Achieve the Milestone 14 by the expiry of the Delay Period Limit.

39.2.2 For the purpose of **Clause 39.2.1**, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

39.3 Termination in Relation to Financial Standing

39.3.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in

the financial standing of the Supplier, including as set out in **Clause 21.1.1 (Early Warning)**, which:

- (a) adversely impacts on the Supplier's ability to supply the Services under this Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Agreement.

39.4 Termination on Insolvency

39.4.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

39.5 Termination on Change of Control

39.5.1 The Supplier shall notify the Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that is anticipating, undergoing, undergoes or has undergone a change of Control or of the Guarantor otherwise ceasing to be the Ultimate Parent Undertaking of the Supplier or there otherwise being any change of Ultimate Parent Undertaking and provided such notification does not contravene any Law.

39.5.2 The Supplier shall ensure that any notification made pursuant to **Clause 39.5.1** shall set out full details of the change of Control including the circumstances suggesting and/or explaining change of Control and the identity of the new controller or Ultimate Parent Undertaking (as applicable) and shall provide such information as to their financial standing as the Customer may reasonably request.

39.5.3 The Customer may terminate this Agreement under **Clause 39.5** by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a change of Control of the Supplier is in contemplation, planned or has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware that a change of Control of the Supplier is in contemplation, planned or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the change of Control.

39.6 Termination Without Cause

39.6.1 The Customer shall have the right to terminate this Agreement at any time by issuing a Termination Notice to the Supplier giving written notice and this Agreement shall terminate on the date specified in the Termination Notice

39.7 Termination in Breach of the Regulations

39.7.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the

statutory provisos contained in Regulation 73 (1) (a) or (b) of the Regulations.

39.8 Termination in relation to performance for health and safety measured under the Collaborative Performance Framework

39.8.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier in the event that the Supplier's performance for health and safety measured under the Collaborative Performance Framework (or any performance mechanism or framework that replaces it) two (2) Months after implementing a Rectification Plan to improve its performance in relation to health and safety remains at an unacceptable score.

39.9 Termination in relation to Tax Compliance

39.9.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier in the event that:

- (a) The warranty given by the Supplier pursuant to **Clause 4.2.5** is materially untrue; or
- (b) The Supplier commits a material breach of its obligations to notify the Customer of any Occasion of Tax Non-Compliance as required **by Clause 24**; or
- (c) The Supplier fails to provide details of proposed mitigating factors as required by **Clause 24.1.2(a)** which in the reasonable opinion of the Customer, are acceptable.

40. SUPPLIER TERMINATION RIGHTS

40.1 Termination on Failure to Pay

40.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Agreement if the Customer fails to pay an undisputed sum properly due to the Supplier under this Agreement which in aggregate exceeds the £21,243 and such amount remains outstanding for forty (40) Working Days ("**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier (specifying the amount outstanding and that failure to pay may result in termination of the Agreement) and this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice).

40.1.2 The Supplier shall not suspend the supply of the Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

41. TERMINATION BY EITHER PARTY

41.1 Termination for continuing Force Majeure Event

41.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Agreement if, in accordance with **Clause 38.6.1 (Force Majeure)**.

42. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

42.1 Where the Customer has the right to terminate this Agreement the Customer shall be entitled to terminate or suspend all or part of this Agreement provided always that, if the Customer elects to terminate or suspend this Agreement in part, the parts of this Agreement not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Agreement.

42.2 Any suspension of this Agreement under **Clause 42.1** shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

42.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:

42.3.1 an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under **Clause 39 (Customer Termination Rights)** except **Clause 39.6 (Termination Without Cause)**; and

42.3.2 reject the Variation.

43. CONSEQUENCES OF EXPIRY OR TERMINATION

43.1 **Consequences of termination under Clauses 39.1 (Termination in Relation to Guarantee), 39.2 (Termination on Material Default), 39.3 (Termination in Relation to Financial Standing), 39.8 (Termination in relation to performance for health and safety measured under the Collaborative Performance Framework) and 39.9 (Termination in relation to Tax Compliance)**

43.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Agreement under any of the Clauses referred to in **Clause 43.1**; and
- (b) 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 Term provided that Customer shall take all reasonable steps to mitigate such additional expenditure. 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.

43.2 Consequences of termination under Clauses 39.6 (Termination without Cause) and 40.1 (Termination on Failure to Pay)

43.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Agreement under **Clause 39.6 (Termination without Cause)**; or
- (b) the Supplier terminates this Agreement pursuant to **Clause 40.1 (Termination on Failure to Pay)**,

the Customer shall reimburse the Supplier in respect of any reasonable and proven Losses relating to:

- (c) redundancy of Supplier Personnel dedicated to performance of the Services who cannot reasonably be deployed and do not transfer to a Replacement Supplier;
- (d) amounts payable by the Supplier to its Sub-Contractors for terminating relevant Sub-Contracts as a direct result of the early termination of this Agreement; and
- (e) Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain as at the date of termination to be recovered through Charges that but for the termination of this Agreement would have been payable by the Customer after the date of termination in accordance with **Schedule 3 (Charging, Payment and Invoicing)** as such Costs and Charges are forecast in the Financial Model

which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Agreement, provided that the Supplier takes all reasonable steps to mitigate such Losses, including by:

- (f) the appropriation of assets, employees and resources for other purposes;
- (g) at the Customer's request, assigning any Sub-Contracts to the Customer or a third party acting on behalf of the Customer; and
- (h) in relation to Sub-Contracts that are not to be assigned to the Customer or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under **Clause 39.6 (Termination without Cause)**.

43.2.2 The Customer shall not be liable under **Clause 43.2.1** to pay any sum which:

- (a) 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
- (b) when added to any sums paid or due to the Supplier under this Agreement exceeds the total sum that would have been payable to the Supplier if this Agreement had not been terminated.

43.2.3 Payment by the Customer of Losses in accordance with **Clause 43.2.1** shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Customer pursuant to under **Clause 39.6 (Termination without Cause)** or the Supplier pursuant to **Clause 40.1 (Termination on Failure to Pay)** (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

43.3 **Consequences of termination under Clause 41.1 (Termination for Continuing Force Majeure Event)**

43.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to **Clause 41.1 (Termination for Continuing Force Majeure Event)**.

43.4 **Consequences of Termination for Any Reason**

43.4.1 Save as otherwise expressly provided in this Agreement:

- (a) termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Agreement shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under **Clauses 20 (Records, Audit Access & Open Book Data), 31 (Intellectual Property Rights), 32.4 (Confidentiality), 32.6 (Freedom of Information) 32.7 (Protection of Personal Data), 34 (Liability), 43 (Consequences of Expiry or Termination), 49 (Severance), 51 (Entire Agreement), 52 (Third Party Rights) 54 (Dispute Resolution) and 55 (Governing Law and Jurisdiction)**, and the provisions of **Schedule 1 (Definitions), Schedule 3 (Charging, Payment and Invoicing), Schedule 11 (Exit Management), Schedule 13 (Dispute Resolution Procedure), Schedule 16 (Staff Transfer)** and, without limitation to the foregoing, any other

provision of this Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

43.5 Exit management

43.5.1 The Parties shall comply with the exit management provisions set out in **Schedule 11 (Exit Management)**.

L. MISCELLANEOUS AND GOVERNING LAW

44. COMPLIANCE

44.1 Health and Safety

44.1.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.

44.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement

44.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

44.2 Equality and Diversity

44.2.1 The Supplier shall:

- (a) perform its obligations under this Agreement (including those in relation to provision of the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

44.3 Official Secrets Act and Finance Act

- 44.3.1 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.

44.4 Environmental Requirements

44.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Agreement in accordance with the Environmental Policy of the Customer.

44.4.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

45. ASSIGNMENT AND NOVATION

45.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement or any part of it without Approval.

45.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Agreement or any part thereof to:

45.2.1 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

45.2.2 any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this **Clause 45.2**.

45.3 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a private sector in accordance with **Clause 45.2.2** (the "**Transferee**" in the rest of this Clause) the right of termination of the Customer in **Clause 39.4 (Termination on Insolvency)** shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in **Clause 39.4 (Termination on Insolvency)** and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee).

46. WAIVER AND CUMULATIVE REMEDIES

46.1 The rights and remedies under this Agreement may be waived only by notice in accordance with **Clause 53 (Notices)** and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.

46.2 Unless otherwise provided in this Agreement rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

47. RELATIONSHIP OF THE PARTIES

- 47.1 Except as expressly provided otherwise in this Agreement nothing in this Agreement nor any actions taken by the Parties pursuant to this Agreement shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

48. PREVENTION OF FRAUD AND BRIBERY

- 48.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- 48.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 48.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 48.2 The Supplier shall not during the Term:
- 48.2.1 commit a Prohibited Act; and/or
 - 48.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 48.3 The Supplier shall during the Term:
- 48.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 48.3.2 keep appropriate records of its compliance with its obligations under **Clause 48.3.1** and make such records available to the Customer on request;
 - 48.3.3 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 Agreement. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - 48.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to

prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

- 48.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of **Clause 48.1**, or has reason to believe that it has or any of the Supplier Personnel have:
- 48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 48.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 48.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 48.5 If the Supplier makes a notification to the Customer pursuant to **Clause 48.4**, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with **Clause 20 (Records, Audit Access and Open Book Data)**.
- 48.6 If the Supplier breaches **Clause 48.3**, the Customer may by notice:
- 48.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 48.6.2 immediately terminate this Agreement for material Default.
- 48.7 Any notice served by the Customer **under Clause 48.4** shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Agreement shall terminate).

49. SEVERANCE

- 49.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 49.2 In the event that any deemed deletion under **Clause 49.1** is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement

so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

- 49.3 If the Parties are unable to resolve the Dispute arising under this **Clause 49** within twenty (20) Working Days of the date of the notice given pursuant to **Clause 49.2**, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this **Clause 49**.

50. FURTHER ASSURANCES

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

51. ENTIRE AGREEMENT

- 51.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 51.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 51.3 Nothing in this **Clause 51** shall exclude any liability in respect of misrepresentations made fraudulently.

52. THIRD PARTY RIGHTS

- 52.1 The provisions of paragraph 9.9 of **Schedule 11 (Exit Management)** and the provisions of **Schedule 16 (Staff Transfer)** where applicable (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 52.2 Subject to **Clause 52.1** a person who is not a Party to this has no right under the CTRPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 52.3 No Third-Party Beneficiary may enforce, or take any step to enforce, any Third-Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 52.4 Any amendments or modifications to this Agreement may be made, and any rights created under **Clause 52.1** may be altered or extinguished, by the Parties without the consent of any Third-Party Beneficiary.

53. NOTICES

53.1 Except as otherwise expressly provided within this Agreement any notices sent under this Agreement must be sent by email.

53.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

53.3 This **Clause 53** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

53.4 For the purposes of this **Clause 53**, the relevant contact, address and email address of each Party are set out below:

	Supplier	Customer
Contact	eLocker	National Highways
Email address	sales@elocker.com	David.forde@nationalhighways.co.uk

Address	eLocker Icon Innovation Centre, Eastern Way, Daventry, NN110QB	Temple Quay House 2 The Square, Temple Quay Bristol BS1 6HA
Telephone	020 8798 0210	07874 883987

54. DISPUTE RESOLUTION

- 54.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 54.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

55. GOVERNING LAW AND JURISDICTION

- 55.1 This Agreement and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 55.2 Subject to **Clause 54 (Dispute Resolution)** and **Schedule 12 (Dispute Resolution Procedure)** (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed on behalf of **NATIONAL HIGHWAYS LIMITED** on the date stated at the beginning of this Agreement

Adrian Sillitoe

Signature

Signed on behalf of **eLocker**

Jacob Hinson

Signature of director/officer

SCHEDULE 1 - DEFINITIONS

In accordance with **Clause 1 (Definitions and Interpretations)** of this Agreement including its recitals the following expressions shall have the following meanings:

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Testing Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"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;
"Agreement "	means this agreement between the Customer and the Supplier
"Agreement Year"	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Offshore Location"	the Supplier premises outside of the UK which have been approved by the Customer following the Commencement Date in accordance with the procedure set out in Clause 18.4.4 (Off-shore Working) ;
"Approved Sub-Licensee"	means any of the following: a) a Central Government Body; b) any third party providing services to a Central Government Body; and/or c) anybody (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 Customer.
"ATP Milestone"	means the Milestone linked to Authority to Proceed for the relevant Services set out in the Implementation Plan;
"Auditor"	means: a) the Customer's internal and external auditors; b) the Customer's statutory or regulatory auditors;

	<ul style="list-style-type: none"> c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; d) HM Treasury or the Cabinet Office; e) any party formally appointed by the Customer to carry out audit or similar review functions; and f) successors or assigns of any of the above;
"Authority to Proceed" or "ATP"	means the authorisation to the Supplier to commence the provision of the relevant Services to the Customer, provided by the Customer in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
"BCDR Plan"	means the plan prepared pursuant to paragraph 2 of Schedule 10 (Business Continuity and Disaster Recovery) , as may be amended from time to time;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services;
"Business Continuity Services"	has the meaning given to it in paragraph 4.2.2 of Schedule 10 (Business Continuity and Disaster Recovery) ;
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the terms which comes into force after the Commencement Date;
"Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Agreement as set out in Annex 1 of Schedule 3 (Charging, Payment and Invoicing) , for the full and proper performance by the Supplier of its obligations under this Agreement less any Deductions;
"Commencement Date"	means the date on which this agreement is executed by both the Parties;

"Commercially Sensitive Information"	means the Confidential information listed in Part D of Schedule 4 (Supplier Solution) (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;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Compensation for Critical Service Level Failure"	has the meaning given to it in Clause 13.1.2 (Critical Service Level Failure) ;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Continuous Improvement Plan"	has the meaning given in Schedule 17 (Continuous Improvement) ;
"Contracts Finder"	means the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Regulations;
"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;
"CO Offshoring Policy Document"	means "Offshoring of HMG data and digital services at OFFICIAL" available in https://protect-eu.mimecast.com/s/tqvCwjnYFykXgNSKbNj-?domain=extranet.cpni.gov.uk , or any subsequent update or replacement therefor;
"Costs"	means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services: <ul style="list-style-type: none"> a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:

	<ul style="list-style-type: none"> i) base salary paid to the Supplier Personnel; ii) employer's national insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Customer; <p>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;</p> <p>but excluding:</p> <ul style="list-style-type: none"> a) Overhead; b) financing or similar costs; c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term whether in relation to Supplier Assets or otherwise; d) taxation; e) fines and penalties; and f) non-cash items (including depreciation, amortisation, impairments and movements in provisions);
"CPP Milestone"	<p>means the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 5 (Testing);</p>

"Critical Service Level Failure"	means any instance of critical service level failure specified in Annex 2 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) ;
"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;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;
"Customer Background IPR"	means: <ul style="list-style-type: none"> a) IPRs owned by the Customer before the Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; b) IPRs created by the Customer independently of this Agreement; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; but excluding IPRs owned by the Customer subsisting in the Customer Software;
"Customer Cause"	means any material breach by the Customer of any of the Customer Responsibilities, except: <ul style="list-style-type: none"> a) as the result of any act or omission by the Customer to which the Supplier has given its prior consent; or b) where caused by the Supplier, any Sub-Contractor or any Supplier Personnel;
"Customer Data"	means: <ul style="list-style-type: none"> 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, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or

	<p>ii) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>b) any Personal Data for which the Customer is the Data Controller;</p>
"Customer Default"	means any breach of the obligations of the Customer (including but not limited to including abandonment of this Agreement in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Customer, its employees, servants or agents howsoever arising in connection with or in relation to the subject-matter of this Agreement and in respect of which the Customer is liable to the Supplier;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including the Customer System issued or made available to the Supplier by the Customer in connection with this Agreement;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Agreement;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Part [•] of Schedule 2 (Services) ;
"Customer Software"	means any software identified as such in Schedule 9 (Software) together with all other software which is not identified as such in Schedule 9 (Software) but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Services;
"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 Agreement 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"	<p>means:</p> <p>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR);</p>

	<p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Agreement; and</p> <p>c) information derived from any of the above;</p>
"Customer's Risk Assessment"	means the full risk assessment and security review carried out by the Customer [which is in line with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51 and ICT Offshoring (International Sourcing) Guidance dated July 2011] or, in each case, as later amended or replaced;
"Data Controller"	has the meaning given to it in the Data Protection Act 2018, as amended from time to time;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Processor"	has the meaning given to it in Data Protection Legislation, as amended from time to time;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation" or "DPA"	means the Data Protection Act 2018 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"	has the meaning given to it in Data Protection Legislation, as amended from time to time;
"Data Subject Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access their Personal Data;
"Deductions"	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Agreement;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Agreement in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising

	in connection with or in relation to the subject-matter of this Agreement and in respect of which the Supplier is liable to the Customer;
"Defect"	<p>means any of the following:</p> <ul style="list-style-type: none"> a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Agreement; or d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Agreement;
"Delay"	<p>means:</p> <ul style="list-style-type: none"> a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Delay Payments"	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in Part A of Schedule 4 (Implementation Plan) ;
"Delay Period Limit"	shall be the number of days specified in Part A of Schedule 4 (Implementation Plan) , for the purposes of 7.4.1(b)(ii);
"Deliverable"	<p>means:</p> <ul style="list-style-type: none"> a) an item or feature in the supply of the Services (including any Goods) delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Agreement; and / or

	b) a tangible work product, professional service, outcome or related material or item (including any Goods) that is to be achieved or delivered to the Customer by the Supplier as part of the Services as defined in Schedule 2 .
"Delivery"	means, in respect of the Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Agreement and accepted by the Customer and " Deliver " and " Delivered " shall be construed accordingly;
"DfT"	means the Department for Transport;
"Deposited Software"	means the Software the Source Code of which is to be placed in escrow as required by the Customer and notified to the Supplier from time to time including as identified in Schedule 9 (Software) ;
"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 (or could reasonably be anticipated to be unavailable for a period exceeding 4 hours (for the purposes of this definition the " Disaster Period ");
"Disaster Recovery Services"	means the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Schedule 10 (Business Continuity and Disaster Recovery) ;
"Disclosing Party"	has the meaning given to it in Clause 32.4.1 (Confidentiality) ;
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Agreement including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure) ;
"Documentation"	means all documentation as: a) is required to be supplied by the Supplier to the Customer under this Agreement;

	<p>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</p> <p>c) is required by the Supplier in order to provide the Services; and/or</p> <p>d) has been or shall be generated for the purpose of providing the Services;</p>
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Commencement Date;
"Emergency Maintenance"	<p>means ad hoc and unplanned maintenance provided by the Supplier where:</p> <p>a) the Customer reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or</p> <p>b) the Supplier reasonably suspects that the ICT Environment or the Services, or any part the ICT Environment or the Services, has or may have developed a fault;</p>
"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <p>a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</p>

	<ul style="list-style-type: none"> b) unfair, wrongful or constructive dismissal compensation; c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d) compensation for less favourable treatment of part-time workers or fixed term employees; e) outstanding 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; f) claims whether in tort, contract or statute or otherwise; g) 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;
"Employment Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"Environmental Information Regulations or EIRs"	means 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, including any written environmental policy of the Customer;
"Environmental Policy"	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;
"Estimated Year 1 Charges"	means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Charges from the Commencement Date until the end of the first Agreement Year stipulated in Schedule 3;
"Expedited Dispute Timetable"	means the timetable set out in paragraph 5 of Schedule 12 (Dispute Resolution Procedure) ;
"Expiry Date"	means:

	<ul style="list-style-type: none"> a) the end date of the Initial Term or any Extension Period; or b) if this Agreement is terminated before the date specified in (a) above, the earlier date of termination of this Agreement;
"Extension Period"	means the extension term of this Agreement from the end date of the Initial Term to the end date of the extension period;
"Financial Model"	means the financial model in a form agreed by the Supplier and the Customer in writing on or before the Effective Date as may be updated from time to time in accordance Clause 20.1.3 (Records, Audit Access and Open Book Data) ;
"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"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Agreement; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;

"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	means a supplier supplying the Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Gain-Share Supplement"	has the meaning given in Schedule 17 (Continuous Improvement) ;
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013 and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"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;
"Goods"	means any goods or equipment to be sold by the Supplier to the Customer as set out in Schedule 2 (Specification) ;
"Government"	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 government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Guarantee"	means a deed of guarantee that may be required under this Agreement in favour of the Customer in the form set out Schedule 14 (Guarantee) granted pursuant to Clause 5 (Guarantee) ;
"Guarantor"	means [Not applicable]
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;

"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Environment"	means the Customer System and the Supplier System;
"Impact Assessment"	has the meaning given to it in Clause 22.1.3 (Variation Procedure) ;
"Implementation Plan"	means the plan prepared by the Supplier and Approved in accordance with the provisions of Clause 7.1 (Formation of Implementation Plan) as may be amended pursuant to Clause 7.2 (Control of Implementation Plan) ;
"Implementation Services"	means the services provided by the Supplier for the design, build, test, implementation and roll out of the Operational Services as described in Schedule 2 (Services) and the Implementation Plan;
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Initial Term"	means a period of 5 years from the Commencement Date;
"Insolvency Event"	<p>means, in respect of the Supplier or Guarantor (as applicable):</p> <ul style="list-style-type: none"> a) 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 b) 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 c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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 d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) 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

	<p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>g) 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</p> <p>h) any event analogous to those listed in limbs (a) to (g) (inclusive) occurs under the law of any other jurisdiction;</p>
"Intellectual Property Rights" or "IPR"	<p>means</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>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</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"IPR Claim"	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Agreement (including the Software);</p>
"Key Personnel"	<p>means the individuals (if any) identified as such in Part C of Schedule 4 (Key Personnel);</p>
"Key Role(s) "	<p>has the meaning given to it in Clause 25.1 (Key Personnel);</p>
"Key Sub-Contract"	<p>means each Sub-Contract with a Key Sub-Contractor;</p>
"Key Sub-Contractor"	<p>means any Sub-Contractor:</p> <p>a) which, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</p> <p>b) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement;</p>
"Know-How"	<p>means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else</p>

	in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Commencement Date;
"Law"	means any law and any legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body and any legally binding industry code of conduct or guideline, in each case which applies to one or each of the Parties or relates to the subject matter or performance of the Agreement and which is in force from time to time;
"Legal Opinion"	<p>means a legal opinion in a form acceptable to the Customer which confirms that the method of execution of the Guarantee is valid and binding under applicable local law and in particular provides:</p> <ul style="list-style-type: none"> a) confirmation that: <ul style="list-style-type: none"> i) the Guarantor is a corporation duly incorporated in the relevant jurisdiction, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated; ii) the Guarantor has full power to execute, deliver, enter into and perform its obligations under the Guarantee, iii) all necessary corporate, shareholder and other action required to authorise the execution and delivery by the Guarantor of the Guarantee and the performance by it of its obligations under it have been duly taken; iv) execution by the proposed signatories in accordance with the method of execution proposed will constitute valid execution by the Guarantor; v) the execution and delivery by the Guarantor of the Guarantee and the performance of its obligations under it will not conflict with or violate: <ul style="list-style-type: none"> (1) the constitutional documents of the Guarantor; (2) any provision of the laws of the jurisdiction in which it is incorporated, (3) any order of any judicial or other authority in the jurisdiction in which it is incorporated; or (4) any mortgage, contract or other undertaking which is binding on the bidder or its assets; and vi) (assuming that it is binding under English law) the Guarantee constitutes legal, valid and binding

	<p>obligations of the Guarantor enforceable in accordance with its terms,</p> <p>b) notification of any other formalities to be complied with under local law which may be necessary to enforce the Guarantee in the Guarantor's place of incorporation, including notarisation, legalisation or registration of the Guarantee;</p> <p>c) notification of whether withholding is required to be made by the Guarantor in relation to any monies payable to Customer under the Guarantee;</p> <p>d) confirmation of whether the Customer will be deemed to be resident or domiciled in the foreign jurisdiction by reason of its entry into the Guarantee; and</p> <p>e) confirmation that the Guarantor and its assets are not entitled to immunity from suit, pre-judgment attachment or restraint or enforcement of a judgment on grounds of sovereignty or otherwise in the courts of England and Wales in respect of proceedings against it in relation to the Guarantee;</p>
"Licensed Software"	means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Customer for the purposes of or pursuant to this Agreement including any Supplier Software, Third Party Software [and/or any Specially Written Software];
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Maintenance Schedule"	has the meaning given to it in Clause 31.1 (Maintenance of the ICT Environment)
"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;
"Milestone"	means an event or task set out in Schedule 4, Part A (Implementation Plan) and described in the Implementation Plan which must be completed by the relevant Milestone Date;

"Milestone Date"	means the date set out against the relevant Milestone in the Schedule 4, Part A (Implementation Plan) by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"New Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Occasion of Tax Non Compliance"	<p>means:</p> <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) any tax return of the Supplier's submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;
"Open Book Data "	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of this Agreement including details and all assumptions relating to:</p> <ul style="list-style-type: none"> a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement

	<p>costs) and the unit cost and total actual costs of all hardware and software;</p> <p>b) operating expenditure relating to the provision of the Services including an analysis showing:</p> <ul style="list-style-type: none"> i) the unit costs and any other consumables and bought-in services; ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin. <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</p> <p>e) the Supplier Profit achieved over the Term and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period.</p>
"Open Source Software"	means 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;
"Operating Environment"	means the Customer System and the Sites;
"Operational Services"	means the part of the Services required to be delivered following the relevant ATP Milestone Date as described in Schedule 2 (Services) ;
"Operational Service Commencement Date"	<p>in relation to an Operational Service, the later of:</p> <ul style="list-style-type: none"> a) the date identified in Schedule 4, Part A (Implementation Plan) upon which the Operational Service is to commence; and

	b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
"Optional Services"	the services described as such in Schedule 2 (Services) which are to be provided by the Supplier if required by the Customer in accordance with Clause 8.3 (Optional Services) ;
"Optional Services Implementation Plan"	the implementation plan to effect the Optional Services agreed between the Parties prior to the Commencement Date and, if not agreed prior to the Commencement Date, to be developed by the Supplier and Approved by the Customer;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"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 Customer or the Supplier and " Parties " shall mean both of them;
"Performance Monitoring System"	has the meaning given to it in paragraph 1.1.2 in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) ;
"Performance Monitoring Reports"	has the meaning given to it in paragraph 3.1 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring) ;
"Personal Data"	has the meaning given to it in Data Protection Legislation;
"Permitted Maintenance"	has the meaning given to it in Clause 30.3 (Maintenance of the ICT Environment) ;

"Processing"	has the meaning given to it in Data Protection Legislation but, for the purposes of this Agreement it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Project Specific IPR"	<p>means:</p> <ul style="list-style-type: none"> a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or b) IPR in or arising as a result of the performance of the Supplier's obligations under this Agreement and all updates and amendments to the same; <p>but shall not include the Supplier Background IPR or the Specially Written Software;</p>
"Quality Plans"	shall have the meaning given in Clause 10.2 (Standards and Quality) ;
"Recipient"	has the meaning given to it in Clause 32.4.1 (Confidentiality) ;

"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 36.2 (Rectification Plan Process) ;
"Registers"	has the meaning given to in Schedule 11 (Exit Management) ;
"Regulations"	means the Public Contracts Regulations 2015 as amended from time to time;
"Related Supplier"	means any person who provides Services to the Customer which are related to the Services from time to time;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 37.2.2 (Supplier Relief Due to Customer Cause) ;
"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 Date, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Agreement or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
"Restricted Transfer"	means a transfer of Personal Data processed in connection with the Supplier's obligations under this Agreement which is undergoing processing or which is

	intended to be processed after transfer, to a country or territory to which such transfer is prohibited or subject to any requirement to take additional steps to adequately protect the Personal Data for the transfer to be lawful under the Data Protection Legislation;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Annex 3 to Schedule 5 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Schedule 8 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Schedule 8 (Security) and as updated from time to time;
"Security Policy"	means the Customer's security policy in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Security Policy Framework"	the HMG Security Policy Framework https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf ;
"Service Credit Cap"	has the meaning given to it in paragraph 6 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) ;
"Service Credits"	means any service credits specified in Annex 1 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
"Service Level Performance Criteria"	has the meaning given to it in paragraph 3.2 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) ;
"Service Level Performance Measure"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) or the Collaborative Performance Framework, as applicable;

"Service Level Threshold"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) ;
"Service Levels"	means any service levels applicable to the provision of the Services under this Agreement specified in Annex 1 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) ;
"Service Period"	has the meaning given to in paragraph 4.1 of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) ;
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as referred to Part A of Schedule 2 (Services) and those services which are deliverable by the Supplier;
"Sites"	means any premises (including the Customer Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> a) from, to or at which: <ul style="list-style-type: none"> i) the Services are (or are to be) provided; or ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or b) where: <ul style="list-style-type: none"> i) any part of the Supplier System is situated; or ii) any physical interface with the Customer System takes place;
"Software"	means Specially Written Software, Supplier Software and Third Party Software;
"Software as a Service"	means a method of software delivery and licensing in which software is provided to the market as a service and is accessed online via a subscription, rather than bought and installed on individual computers;
"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 related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement and including software identified as such in the Schedule 9 (Software) ;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Schedule 16 (Staff Transfer);
"Standards"	means any: <ul style="list-style-type: none"> a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (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; b) standards detailed by the Customer in Schedule 7 (Standards) or agreed between the Parties from time to time; c) any relevant Government codes of practice and guidance applicable from time to time as the Supplier would reasonably and ordinarily be expected to comply with
"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 provision of the Services or any part thereof;
"Sub-Contractor"	means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to this Agreement 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 Assets"	means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Customer Assets;
"Supplier Background IPR"	means

	<p>a) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Agreement;
"Supplier 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 this Agreement;
"Supplier Non-Performance"	has the meaning given to it in Clause 37.1 (Supplier Relief Due to Customer Cause) ;
"Supplier Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier named in the Key Personnel Schedule;
"Supplier Software"	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Schedule 9 (Software) together with all other such software which is not identified in the Schedule 9 (Software) 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;

"Supplier Solution"	means the Supplier's solution for the Services set out in Schedule 4 (Supplier Solution) including any Annexes of that Schedule;
"Supplier System"	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Supplier's Confidential Information"	means <ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) 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 and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Agreement; c) information derived from any of the above.
"Supply Chain Transparency Reports"	means reports setting out the following information in respect both of this Agreement and for the Supplier as a whole for the applicable Customer financial year: <ul style="list-style-type: none"> a) estimated total contract revenue (£) to be received; b) total value of Sub-Contracted revenues (£); c) total value of Sub-Contracted revenues to SMEs (as defined by the Customer from time to time) (£); and d) total value of Sub-Contracted revenues to VCSEs (as defined by the Customer from time to time) (£);
"Term"	means the term of this Agreement from the Commencement Date until the Expiry Date, which shall in no event exceed a maximum duration of 9 years years;
"Test" and "Testing"	means any tests required to be carried out pursuant to this Agreement as set out in the Testing Strategy Plan or elsewhere in this Agreement and "Tested" shall be construed accordingly;
"Test Issue"	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in this Agreement;
"Testing Strategy Plan"	means a plan: <ul style="list-style-type: none"> a) for the Testing of Deliverables; and

	b) setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 6 of Schedule 5 (Testing) ;
"Test Success Criteria"	has the meaning given thereto in Schedule 5 (Testing) ;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Software"	means any software identified as such in the Schedule 9 (Software) together with all other software which is not listed in the Schedule 9 (Software) which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services;
"Transferring Supplier Employees"	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
"Transparency Reports"	has the meaning given in Clause 32.5.4 (Transparency) ;
"Undelivered Services"	has the meaning given to it in Clause 9.3.1 (Supply of Services) ;
"Undisputed Sums Time Period"	has the meaning given to it Clause 40.1.1 (Termination of Customer Cause for Failure to Pay) ;
"Update"	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrade"	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during Term;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in Schedule 3 (Charging, Payment and Invoicing) ;
"Variation"	has the meaning given to it in Clause 22.1 (Variation Procedure) ;
"Variation Form"	means the form set out in Schedule 13 (Variation Procedure) ;

"Variation Procedure"	means the procedure set out in Clause 22.1 (Variation Procedure) ;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees applies in respect of the Services; and
"Working Day"	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

SCHEDULE 2 - SERVICES

1. Introduction

- 1.1 National Highways are seeking to replace an existing Traka intelligent locker infrastructure with new hardware / software that will be used to secure and monitor the use of Airwave radios and through transition to use of Emergency Services Network (ESN) Handsets

The lockers are (and will be) located at depots used by National Highways Service Providers (SPs).

Details of the depot locations and the number of radios located at each depot are provided in document "Annex 01 – ESN Requirements – Summary Location and Handset List v1" in the Data Room.

- 1.2 This schedule specifies the intended scope of the Services to be provided by the Supplier under this Agreement and a description of what each of the Services entails.

The requirements for the Services have been categorised under the following headings:

- Hardware Requirements, comprising the Charging, Security and Locker Features aspects set out in table 01.
- Software Requirements, comprising the Software Features, Software Reporting aspects set out in table 02.
- Networking Requirements, comprising the aspects of the networking requirements set out in table 03.
- Implementation Services, comprising the General Implementation Services (set out in paragraph) and the Transition Services (set out in paragraph),
- Operational Services, comprising the Locker Support, Software Support and Network Support set out in table 04.
- Optional Services, which includes the possible future provision of;
 - a. additional lockers for National Highways Traffic Officer Services (TOS). Details of the TOS operational locations and the number of radios /handsets located at each location are provided "Annex 03 - ESN Requirements - Traffic Officer Service (TOS) - Handset Distribution v1" in the Data Room
 - b. new starter training,
 - c. refresher training,
 - d. locker moves and changes,
 - e. locker storage, and
 - f. additional locker access swipe cards.

2. Hardware Requirements

The functional requirements of the locker hardware infrastructure are detailed in Table 01 below.

The cost for Hardware supply must be detailed in the Financial Model.

Payment for Hardware: 50% payment at time the goods are ordered with the remaining 50% payable upon completion of Milestone 14.

Requirement No:	Requirement
2.1	Charging
A	Lockers must be capable of dual hosting both Airwave Radios and ESN handsets within the same compartment.
B	The system must also be able to establish if a user has withdrawn an Airwave Radio, an ESN handset, or both.
C	Each locker compartment must be equipped with the ability to have a minimum of two fly leads for the purpose of charging stored devices
D	Fly leads must be able to be changed if either broken or damaged, or to accommodate new devices stored in the compartments
E	Lockers must have the facility for the ESN handsets to be charged when not in use
F	Lockers must be able to store and charge multiple ESN handsets, with intelligent charging capabilities.
G	Lockers must have the facility for Airwave radio batteries to be charged when not in use
2.2	Security
A	Locker functionality / security must facilitate compliance with Home Office TEA2 licence obligations (See the ' <i>Airwave Service Code of Practice Issue Version 5 – 10 Dec 15.pdf</i> ' on Bravo. The assumption is that the as yet unreleased ESN Code of Practice will be functionally the same)
B	Lockers must be constructed of steel and with a high security lock (i.e. it provides high resistance to compromise) and are subject to controlled, authorised, and documented access
C	Access to Airwave radios and ESN handsets must be controlled by use of 2-factor identification (i.e. unique ID card or similar device and PIN). Due to GDPR restrictions biometric solutions are not acceptable
2.3	Locker features

A	Each locker compartment must be able to read RFID tags (or equivalent) attached to, or embedded in, single or multiple devices
B	Lockers must facilitate the ability of ESN handsets to receive software / firmware updates whilst in the locker
C	Lockers must provide sufficient functionality that allows non-supervised / self-service operation in a depot environment
D	Lockers must have battery backup in the event of power failure
E	Lockers must have sufficient memory to store user and access data in the event of power or communication failure for a minimum of 30 days.
F	The supplier must be able to supply lockers with different numbers of storage compartments, which can cater for the different numbers of radios / handsets per operational location
G	If, due to the operational nature of the site i.e. salt depots, the locker cannot be located within a securely locked location / room, suppliers must propose a solution for external security for a locker e.g. housing the radio / handset locker within another secure cabinet. For locker locations please see “Annex 02 - ESN Requirements - Additional Secure Cabinet List v1”
H	The heat within the lockers produced from charging must be managed at a safe level.
I	Lockers must be able to be powered by domestic power 230V/250V supply.
J	Lockers must default to a locked state in the event of power failure.
K	Lockers must have a manual lock override feature only accessible to authorised system administrators (Radio Terminal Custodians, RTCs).
L	The proposed locker configuration for each location must provide at least an additional 10% of spare capacity to cater for radio relocation.

Table 01 Hardware Requirements

3. Software Requirements

The functional requirements of the locker operating, and management reporting software is detailed in Table 02 below

Requirement No:	Requirement
3.1	Software features
A	The supplier must provide a secure database to hold and maintain a register of authorised users, user access to lockers and their contents, and details of stored devices (e.g. MSISDN, ISSI, model number, etc.)

B	Utilising RFID or equivalent technology, the operating software must be able to detect if one, or multiples devices have been removed and returned to a locker compartment
C	The software must facilitate the adoption of role-based permissions e.g. an authorised user can access radios in their area, an SP RTC can manage the software and all radios in their area, the National Highways RTC and National Highways SP RTC can access all radios in all areas and all software functionality, etc
D	Authorised user data must be stored securely and must comply with GDPR regulations. Refer to Schedule 8 for full security requirements.
E	The locker software must be configurable for dictating the order of release for handset e.g. last in, last out, or the handset with the highest charge is released first etc.
F	The software must only release one set of devices (one set being an Airwave and ESN device) per user, per SP area.
G	The locker software must facilitate the remote unlocking of an individual storage compartment within the locker by the system administrator (RTC) to facilitate handset issue
H	The software must provide the facility for a device to be taken from a locker in one storage location (depot) and returned to a locker in a different storage location (depot).
I	The software must provide the ability to log defective handsets against a pre-agreed list of fault codes.
3.2	Software Reporting
A	The software must provide the ability to control access to functionality and reporting by National Highways Service Provider (SP) operational area e.g. Radios taken out, User who takes them out, Radio errors, Overdue radios, immediate notifications for security fault.
B	The software must have the ability to create management / storage / issue / access reports regardless of which SP organisation is running the contract in an area
C	The software must have the facility to produce a variety of management reports e.g. handset usage, handset faults, late returns, non-returns, locker faults etc., both nationally and by SP area
D	The software must be capable of monitoring dual RFID tags (or equivalent) attached to devices in order to monitor issue and return of the two devices hosted within the same storage compartment
E	The locker software must maintain a record of issue and return i.e. who the handset was issued to + the time of issue and return

F	The locker software must facilitate authorised users to add notes to devices e.g. 'returned for repair' and each note must have a user, date, and time entered against it.
3.3	Database
A	The authorised user and locker infrastructure database must be maintained securely, with access to data, enquiry, editing and manipulation restricted to authorised users.
B	The database must be hosted securely and accessible only to approved National Highways employees and contractors.
C	The software must provide the facility for a master database of authorised users, both nationally and by Service Provider (SP) area to be created, maintained and analysed
D	When a change in SP organisation occurs, migration of authorised user data must be updated onto the database, with no down time
E	The database must be subjected to monthly cyber security checks, with any issues identified and rectified within 7 days
F	Access to the database must be via 2-stage authentication.
G	The database must be accessible via laptop, tablet, and/or smartphone

Table 02 – Software and Database Requirements

4. **Networking Requirements**

The functional requirements of the locker networking infrastructure are detailed in Table 03 below.

Req No	Requirement
A	To facilitate the functionality of the master database, the locker supplier must install and maintain a wireless network connectivity to all installed lockers / cabinets.
B	The supplier must implement a resilient wireless network connection to all lockers.
C	The supplier must ensure that the system provides a network connection at all depot locations.
D	The supplier must produce daily network availability reports

Table 03 – Networking Requirements

5. **Implementation Services**

The chosen supplier will be responsible for implementing the new locker infrastructure at the nominated locations as identified in “Annex 01 - ESN

Requirements - Summary Location and Handset List v1". In addition, they will be responsible for commissioning the new lockers plus decommissioning and disposing of the existing locker and key cabinet infrastructure.

The requirements are detailed in Table 04 below.

Req No:	Requirement
5.1	Implementation Requirements
A	The supplier must provide a project plan detailing actions and timescales for decommissioning the existing Traka locker infrastructure and installing and commissioning the new infrastructure. The project plan must include an onboarding plan describing how the service will be delivered, points of contact, and contact details.
B	The supplier must decommission and dispose of the existing installed Traka locker infrastructure in accordance with WEEE (Waste, Electric, and Electronic Equipment) regulations.
C	Within the project plan, the supplier must clearly identify actions that are the responsibility of National Highways.
D	The supplier must include testing and acceptance processes / procedures as part of the Deploy stage, that will be approved by National Highways.
E	The supplier must undertake initial and ongoing training in the use of the locker infrastructure and the supporting operating software
F	The supplier must allocate a named Project Manager who will oversee the implementation of the new infrastructure and the decommissioning of the old infrastructure
G	The supplier must ensure the lockers are secured on the wall or floor

Table 04 -Implementation Services

Implementation Timeline

It is intended that the infrastructure implementation services will commence on the 15th April 2022 with a target operational date for the entire estate by the 31st August 2022. National Highways will consider alternative implementation plans.

Key Milestones

It is anticipated that implementation will take the form of a rolling programme SP area by SP area. Commissioning and live operation will follow the same format.

Schedule 04 is to be completed and submitted with your response.

6. Operational Services

Service Management

The on-going support requirements are detailed in table 05 below.

Req No:	Requirement
6.1	Locker Support
A	The supplier must undertake both preventative and reactive maintenance of the installed infrastructure for the period of the contract.
B	The supplier must provide technical support to the Service Providers (SPs) Radio Terminal Custodians (RTCs) to facilitate the production of ad-hoc reports on locker availability, locker and radio/handset issue and return statistics
C	The supplier must support a Technical Support web site that users can log on to view the latest information, product updates and new hardware features.
D	The supplier must provide maintenance and support to all locker locations within England
E	The supplier must roll out hardware and firmware upgrades, subject to consultation with the Service Provider's RTC and the nominated National Highways SP RTC
F	The supplier must have an established nationwide fleet of engineers (all at the same competence / engineering / knowledge / technical level) on-hand to respond to incidents within contractually defined SLA times.
G	The supplier must conduct an annual hardware service on each locker. This must be conducted on-site by an engineer qualified to support the infrastructure. This will be part of the annual charge
H	The supplier must remove and / or reinstall lockers from / to alternative service depot locations where requested.
I	The supplier must include ad hoc visits to all locker / depot locations, as required, to cover the provision of support to repair any faults arising with the Traka lockers / cabinets during the contract period.
J	Following each site visit, the supplier must provide an engineer's report detailing what action the engineer took, record what problems were found, what corrective action was taken.
K	The supplier must provide a service / help desk function that is available, at a minimum, between 08.30 to 17.00 (Monday to Friday).
L	The supplier must provide on-site training in the use of software / configuration / reports for National Highways and / or Service Provider staff.
6.2	Software Support
A	The supplier must provide software support and software updates / enhancements to the installed infrastructure for the duration of the contract.
B	The supplier must provide technical support to the Service Providers (SPs) Radio Terminal Custodians (RTCs) to facilitate the production of ad-hoc reports on locker availability, locker and radio/handset issue and return statistics

C	The supplier must support a Technical Support web site that users can log on to view the latest information, product updates and new software features.
D	The supplier must roll out software and firmware upgrades, subject to consultation with the Service Provider's RTC and the nominated National Highways SP RTC.
E	The supplier must provide a service / help desk function that is available, at a minimum, between 08.30 to 17.00 (Monday to Friday).
F	The supplier must provide on-site training in the use of software / configuration / reports for National Highways and / or Service Provider staff.
G	The supplier must produce an exit plan as part of the onboarding process to describe how services will be handed over in the event of a changeover to a new supplier.
6.3	Network Support
A	The supplier must reconfigure new network connections at a time of an additional locker being implemented.
B	The supplier must reconfigure for new network connections at a time of locker relocation
C	The supplier must monitor the network 24x7 and daily network availability reports must be produced for all depot / locker locations.
D	The supplier must reconfigure new network connections when there is a change of Service Provider.
E	The supplier must provide a service / help desk function that is available, at a minimum, between 08.30 to 17:00 (Monday to Friday).
G	The supplier must produce an exit plan as part of the onboarding process to describe how services will be handed over in the event of a changeover to a new supplier.

Table 05 – Operational Services

7. Optional Services

The supplier should quote for the Optional Services described below.

Costs for each service should be put in 'Tab 3. Optional Services' of the Financial Model.

Supporting information should be described in your Quality Response.

Ref	Requirement
Optional Service 1 1.1 Provision of lockers for the Traffic Officer Service (TOS)	This is the roll-out of the potential 2 nd phase to the TOS in the quantities and to the locations as described in "Annex 03 - ESN Requirements - Traffic Officer Service (TOS) - Handset Distribution v1" Prices should be quoted for lockers of the same specification as those being proposed for the Service Providers and on the same basis as described in Section 5 above.

	Assume hardware costs are invoiceable at time of milestone payment.
Optional Services 2	The following services should be made available:
2.1 New Starter Training	New members of National Highways and / or SP staff will need to be fully trained to use the devices, lockers, and locker / device tracking software. Suppliers should quote a day rate for this service, which can be described in the quality response.
2.2 Refresher Training	Staff may require periodic refresher training to ensure best practice is being consistently applied and updated. Suppliers should quote a day rate for this service, which can be described in the quality response.
2.3 Technical Support	Suppliers should quote a 'day rate' for the provision of both hardware, software and networking support.
2.4 Locker Moves and Changes within a depot	Lockers may need to be moved within a depot or modified e.g. to house more devices. Suppliers should quote a fixed price to move/change a locker.
2.5 Locker Moves between depots	Lockers may need to be moved between depots. Suppliers should quote a fixed price to move a locker between any two depots.
Optional Services 3 Locker Storage	It is expected that lockers to be stored in between locker moves and changes. Suppliers should quote a day rate for this and describe the process in the Quality Response.
Optional Services 4 Additional Locker Access Swipe Cards	The supply of additional supplier swipe cards may be necessary e.g. for new staff. Suppliers should quote a fixed price for the supply of cards in batches of 100 in the Financial Model.

Table 06 – Optional Services

8. The Customer shall:

- a) perform those obligations of the Customer which are set out in the Clauses of the Agreement and the paragraphs of the Schedules (except Schedule 4 (Implementation Plan and Suppliers Matters) Part C);
- b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Customer's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- c) provide sufficient and suitably qualified staff to fulfil the Customer's roles and duties under this Agreement as defined in the Implementation Plan;
- d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Customer and is authorised for release by the Customer;
- e) procure for the Supplier such agreed access and use of the Customer Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably

required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Customer's normal working hours on each Working Day or as otherwise agreed by the Customer (such agreement not to be unreasonably withheld or delayed);

- f) cooperate in the review of all Documentation and Deliverables submitted to the Customer by the Supplier; and
- g) act reasonably in relation to any request to provide support for resolving any issues.

SCHEDULE 3 - CHARGING, PAYMENT AND INVOICING

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Indexation” and “Index”	the adjustment of an amount or sum in accordance with paragraph 4 of Part C of Schedule 3 (Charging, Payment and Invoicing);
“Supporting Documentation”	sufficient information in writing to enable the Customer reasonably to assess whether the Charges and other sums due from the Customer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;

PART A

Pricing

1. APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 1 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Each Milestone Payment shall be one of the following:
 - 1.2.1 “Firm Price”, in which case the provisions of paragraph 3 shall apply.
- 1.3 Each Service Charge shall be one of the following:
 - 1.3.1 “Fixed Price” after Year 5 in which case the provisions of paragraph 2 shall apply;
 - 1.3.2 “Firm Price”, for the first 5 Years in which case the provisions of paragraph 3 shall apply;

2. FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in the Financial Model of Annex 1 (and for Optional Services in Table 3 and Table 4 of Annex 2).
- 2.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.
3. **FIRM PRICE MILESTONE PAYMENTS OR SERVICE CHARGES**
- 3.1 Where a Milestone Payment or Service Charge is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 2 of Annex 1 (and for Optional Services in Table 3 and Table 4 of Annex 2).
- 3.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.
4. **ANTICIPATED MAXIMUM TOTAL CHARGES**
- 4.1 The anticipated maximum total Charges payable over the Term, as detailed in the Contract Award Notice, are £[REDACTED]

PART B

Charging Mechanisms

1. **MILESTONE PAYMENTS**
- 1.1 Subject to the provisions of paragraph 1 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Customer for the Milestone Payment associated with that Milestone less the applicable Milestone Retention (if any) in accordance with this Part B.
2. **SERVICE CHARGES**
- 2.1 Each Service Charge shall commence on the occurrence of the "Service Charge Trigger Event" relating to it as defined in Annex 2.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
- 2.3.1 commences on a day other than the first day of a Month; and/or
- 2.3.2 ends on a day other than the last day of a Month, the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the Month for which the

Service Charge applies bears to the total number of days in that Month.

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

3. **OPTIONAL SERVICES**

1. If the Customer gives notice pursuant to **Clause 8.3.1 (Optional Services)** that it requires the Supplier to provide any or all of the Optional Services:
 - 3.1 the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and
 - 3.2 the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Annex 2,
2. in both cases using the relevant rates and prices also as specified in Annex 2.

PART C

Adjustments to the Charges

1. **DELAY PAYMENTS**

- 1.1 If a Milestone has not been Achieved on or before the relevant Milestone Date and Delay Payments have been included in **Part A of Schedule 4 (Implementation Plan)** in respect of that Milestone, Delay Payment shall be payable in accordance with the provisions of **Clause 7.4.1**.

2. **SERVICE CREDITS**

- 2.1 Service Credits shall be calculated in accordance with the provisions of **Schedule 6 (Service Levels, Service Credits & Performance Monitoring)**.
- 2.2 The liability of the Supplier in respect of Service Credits shall be subject to the Service Credit Cap.
- 2.3 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 2.4 Service Credits shall be shown as a deduction from the amount due from the Customer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

3. CHANGES TO CHARGES

- 3.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with the Variation Procedure.

4. INDEXATION

- 4.1 Any amounts or sums in this Agreement which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this paragraph 4 to reflect the effects of inflation.
- 4.2 Where Indexation applies, the relevant adjustment shall be:
- 4.2.1 applied on the first day of the second April following the Commencement Date and on the first day of April in each subsequent year (each such date an “adjustment date”); and
- 4.2.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the [Consumer Price Index] published for the twelve (12) Months ended on the 31 January immediately preceding the relevant adjustment date.
- 4.3 Except as set out in this paragraph 4, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

PART E

Invoicing and Payment Terms

1. SUPPLIER INVOICES

- 1.1 The Supplier shall:
- 1.1.1 prepare and provide to the Customer for approval of the format a template invoice within ten (10) Working Days of the Commencement Date which shall include, as a minimum, the details set out in paragraph 1.2 together with such other information as the Customer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
- 1.1.2 make such amendments as may be reasonably required by the Customer if the template invoice outlined in paragraph 1.1.1 is not approved by the Customer.
- 1.2 The Supplier shall ensure that each invoice contains the following information:

- 1.2.1 the date of the invoice;
 - 1.2.2 a unique invoice number;
 - 1.2.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 1.2.4 the correct reference for this Agreement;
 - 1.2.5 the reference number of the purchase order (blanket purchase number (BPA)) to which it relates (if any);
 - 1.2.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 1.2.7 a description of the Services;
 - 1.2.8 the pricing mechanism used to calculate the Charges;
 - 1.2.9 any payments due in respect of Achievement of a Milestone, including the Satisfaction Certificate number for each relevant Milestone;
 - 1.2.10 the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 1.2.11 details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - 1.2.12 any Gain-Share Supplement that is due;
 - 1.2.13 reference to any reports required by the Customer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Customer in respect of the Services);
 - 1.2.14 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - 1.2.15 the banking details for payment to the Supplier via electronic transfer of funds; and
 - 1.2.16 where the Services have been structured into separate Service lines, the information shall be broken down in each invoice per Service line.
- 1.3 The Supplier shall invoice the Customer in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Customer a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by the Customer, following which the Supplier shall be entitled to submit its invoice.

- 1.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Customer Representative as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Customer Representative any other documentation reasonably required by the Customer Representative from time to time to substantiate an invoice.
- 1.5 The Supplier shall submit all invoices and Supporting Documentation to:
- [Insert email address or describe electronic means of invoice delivery]***
- with a copy (again including any Supporting Documentation) to the Customer.
- 1.6 All Supplier invoices shall be expressed in sterling.
- 1.7 The Customer shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Customer's requirements set out in this Part E, the Customer shall return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.8 If the Customer fails to consider and verify an invoice in accordance with paragraphs 1.3 and 1.7, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 after a reasonable time has passed.

2. PAYMENT TERMS

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

ANNEX 1

Pricing Mechanism

The Pricing Mechanism is detailed in the file:

26.4.22-ESN_Lockers_-_Financial_Model_V1.1 – FINAL.xlsx

ANNEX 2

Optional Services are detailed in the file:

26.4.22-ESN_Lockers_-_Financial_Model_V1.1 – FINAL.xlsx

Trigger Event for the commencement of Operational Services charges is the completion of the relevant Milestone for the implementation for each area.

SCHEDULE 4 - IMPLEMENTATION PLAN, KEY PERSONNEL AND SUPPLIER SOLUTION

1. INTRODUCTION

1.1 This Schedule specifies:

- 1.1.1 In Part A, the Implementation Plan in accordance with which the Supplier shall provide the Services;
- 1.1.2 In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan;
- 1.1.3 In Part C, the Key Personnel and their Key Roles assigned by the Supplier to this Agreement in accordance with **Clause 25.1** of this Agreement (Key Personnel); and
- 1.1.4 In Part D, the Supplier Solution in respect of facilitating the Supplier's achievement of the Implementation Plan and delivering the Implementation Services and the Operational Services.

PART A: IMPLEMENTATION PLAN

1. GENERAL

1.2 The outline requirements for the Implementation Plan are set out below:

1.2.1 Implementation A

Milestone	Description	Milestone Payment (£)	Date
Milestone 1	Mobilisation		
Milestone 2	50% Hardware Purchase		
	50% Hardware Purchase		
	The first 50% instalment will be paid upon order placement. The second 50% instalment will be paid upon successful completion of Milestone 14.		

1.2.2 Implementation B

The Milestones to be Achieved are Identified below:

Milestone	Area Ref.	Milestone Completion Date	Milestone Payment (£)	Delay Payments
Milestone 3	Area 2 (includes Area 1)			20% of Milestone Payment
Milestone 4	Area 3			20% of Milestone Payment
Milestone 5	Area 4			20% of Milestone Payment
Milestone 6	Area 5			20% of Milestone Payment
Milestone 7	Area 6			20% of Milestone Payment
Milestone 8	Area 7			20% of Milestone Payment
Milestone 9	Area 8			20% of Milestone Payment
Milestone 10	Area 9			20% of Milestone Payment

Milestone 11	Area 10			20% of Milestone Payment
Milestone 12	Area 12			20% of Milestone Payment
Milestone 13	Area 13			20% of Milestone Payment
Milestone 14	Area 14			20% of Milestone Payment

The Milestones will be Achieved in accordance with Schedule 5 (Testing).

For the purposes of Clause 7.4.1(b)(ii) the number of days shall be 365 days (“the Delay Period Limit”)

Milestone payments to be made in accordance with Schedule 3.

The Supplier Implementation Plan shall provide a schedule of sprints and associated activities. It shall include details of:

- Workshops.
- Prioritisation.
- Specification and User Acceptance Criteria.
- User Acceptance Testing.
- Highlight involvement required by The Customer to deliver the programme.

The plan shall be made available to The Customer via a web interface and updated Monthly.

PART B: CUSTOMER RESPONSIBILITIES

2. GENERAL

2.1 The Customer Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Customer Responsibilities in the Implementation Plan.

PART C: KEY PERSONNEL

GENERAL

- 1.3 The Supplier has assigned the following Key Personnel to this Agreement in the Key Roles detailed below:

Key Role	Name of Personnel	Responsibilities/Authority
CEO	[REDACTED]	Overall financial responsibility and driving of project quality and success
Project Manager	[REDACTED]	Overall management and delivery of project. Driver of schedule. POC for National Highways Agency
Chief Technical Officer	[REDACTED]	Delivery of the tech solution including management of the development team
Technical Support Lead	[REDACTED]	Management of the onboarding and solution of any support tickets
Operations Manager	[REDACTED]	Managing the team of installers and ensuring quality installs. Ensuring installs happen in line with schedule
Board Representative	[REDACTED]	Supporting the project internally by relaying updates to the eLocker board

PART D: SUPPLIER SOLUTION

3. SUPPLIER SOLUTION

Not used.

4. COMMERCIALLY SENSITIVE INFORMATION

Commercially sensitive item	Rationale	Duration of Confidentiality
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

5. KEY SUBCONTRACTOR

Key sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/service description	Key Sub contact price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 5 - TESTING

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Component"	means any constituent parts of the Services, bespoke or COTS, hardware or software;
"COTS"	means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard licence terms which are not typically negotiated by the licensor;
"Material Test Issue"	means a Test Issue of Severity Level 1 or Severity Level 2;
"Severity Level"	means the level of severity of a Test Issue, the criteria for which are described in Annex 1 ;
"Test Certificate"	means a certificate materially in the form of the document contained in Annex 2 issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria;
"Test Issue Threshold"	means, in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Testing Strategy Plan;
"Test Issue Management Log"	means a log for the recording of Test Issues as described further in paragraph 9.1 of this Schedule;
"Test Reports"	means the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of this Schedule;
"Test Strategy"	means a strategy for the conduct of Testing as described further in paragraph 5 of this Schedule;
"Test Success Criteria"	means, in relation to a Test, the test success criteria for that Test as referred to in paragraph 6 of this Schedule;
"Test Witness"	means any person appointed by the Customer pursuant to paragraph 10 of this Schedule; and
"Testing Procedures"	means the applicable testing procedures and Test Success Criteria set out in this Schedule.

1. INTRODUCTION

- 1.1 This Schedule (Testing) sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Testing Strategy Plans.

2. RISK

- 2.1 The issue of a Test Certificate, a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
 - 2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or
 - 2.1.2 affect the Customer's right subsequently to reject:
 - (a) all or any element of the Deliverables to which a Test Certificate relates; or
 - (b) any Milestone to which the Satisfaction Certificate relates.
- 2.1 Notwithstanding the issuing of any Satisfaction Certificate (including the Satisfaction Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
 - 2.2.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Customer requirements, including as set out in **Schedules 2 (Services), 7 (Standards) and 8 (Security)**;
 - 2.2.2 the Services are implemented in accordance with this Agreement; and
 - 2.2.3 each Service Level is met.

3. TESTING OVERVIEW

- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Testing Strategy Plans.
- 3.1 The Supplier shall not submit any Deliverable for Testing:
 - 3.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 3.2.2 until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - 3.2.3 until the Parties have agreed the Testing Strategy Plan and the Test Specification relating to the relevant Deliverable(s).
- 3.1 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.1 Prior to the issue of a Test Certificate, the Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

- 3.1 Any Disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4. TEST STRATEGY

- 4.1 The Supplier shall in conjunction with the Customer develop the final Test Strategy as soon as practicable after the Commencement Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree) after the Commencement Date.
- 4.1 The final Test Strategy shall include:
 - 4.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
 - 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 4.2.3 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - 4.2.4 the procedure to be followed to sign off each Test;
 - 4.2.5 the process for the production and maintenance of Test Reports, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
 - 4.2.6 the names and contact details of the Customer's and the Supplier's Test representatives;
 - 4.2.7 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Customer and/or third party involvement in the conduct of the Tests;
 - 4.2.8 the technical environments required to support the Tests; and
 - 4.2.9 the procedure for managing the configuration of the Test environments.

5. TESTING STRATEGY PLANS

- 5.1 The Supplier shall develop Testing Strategy Plans and submit these for approval by the customer as soon as practicable, but in any case, no later than twenty (20) 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.
- 5.1 Each Testing Strategy Plan shall include as a minimum:
 - 5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied;
 - 5.2.2 a detailed procedure for the Tests to be carried out, including:

- (a) the relevant Test Issue Thresholds;
- (b) the timetable for the Tests including start and end dates;
- (c) the Testing mechanism;
- (d) dates and methods by which the Customer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
- (e) the mechanism for ensuring the quality, completeness and relevance of the Tests;
- (f) the format and an example of Test progress reports and the process with which the Customer accesses daily Test schedules;
- (g) the process which the Customer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
- (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing;
- (i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue; and
- (j) the Test Success Criteria for each Test covered by the Testing Plan.

5.1 The Customer shall not unreasonably withhold or delay its Approval of the Testing Strategy Plans provided that the Supplier shall implement any reasonable requirements of the Customer in the Testing Strategy Plans.

6. TEST SUCCESS CRITERIA

6.1 The Test Success Criteria for:

- 6.1.1 each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in [Annex 4](#); and
- 6.1.2 all other Tests shall be agreed between the Parties as part of the relevant Testing Strategy Plan pursuant to paragraph 5 of this Schedule.

7. TEST SPECIFICATION

- 7.1 Following approval of a Testing Strategy Plan by the customer, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 7.1 Each Test Specification shall include as a minimum:

- 7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Customer and the extent to which it is equivalent to live operational data;
- 7.2.2 a plan to make the resources available for Testing;
- 7.2.3 Test scripts;
- 7.2.4 Test pre-requisites and the mechanism for measuring them; and
- 7.2.5 expected Test results, including:
 - (a) a mechanism to be used to capture and record Test results; and
 - (b) a method to process the Test results to establish their content.

8. TESTING

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.1 The Supplier shall manage the progress of Testing in accordance with the relevant Testing Strategy Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 10 of this Schedule.
- 8.1 The Supplier shall notify the Customer at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test Witnesses attend the Tests, except where the Customer has specified in writing that such attendance is not necessary.
- 8.1 The Customer may raise and close Test Issues during the Test witnessing process.
- 8.1 The Supplier shall provide to the Customer in relation to each Test:
 - 8.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - 8.5.2 the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.1 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 8.6.1 an overview of the Testing conducted;
 - 8.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - 8.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

- 8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 9.1 of this Schedule; and
- 8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 8.1 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 8.1 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.
- 8.1 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 provided in accordance with this Agreement.

9. TEST ISSUES

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

10. TEST WITNESSING

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

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

11. TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to **Clause 20** of this Agreement (Records, Audit Access and Open Book Data), 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 (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.1 The focus of the Testing Quality Audits shall be on:
 - 11.2.1 adherence to an agreed methodology;
 - 11.2.2 adherence to the agreed Testing process;
 - 11.2.3 adherence to the Quality Plan;
 - 11.2.4 review of status and key development issues; and
 - 11.2.5 identification of key risk areas.
- 11.1 The Supplier shall allow sufficient time in the Testing Strategy Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.1 The Customer will give the Supplier at least five (5) Working Days' written notice of the Customer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Customer will materially and adversely impact the Implementation Plan.
- 11.1 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Customer witnessing Tests and demonstrations of the Deliverables to the Customer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Customer on a case by case basis (such agreement

not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Customer to enable it to carry out the Testing Quality Audit.

- 11.1 If the Testing Quality Audit gives the Customer concern in respect of the Testing Procedures or any Test, the Customer shall:

11.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and

11.6.2 subsequently prepare a written report for the Supplier detailing its concerns,

and the Supplier shall, within a reasonable timeframe, respond in writing to the Customer's report.

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

12. OUTCOME OF TESTING

- 12.1 The Customer will issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

- 12.1 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Customer shall notify the Supplier and:

12.2.1 the Customer may issue a Test Certificate conditional upon the remediation of the Test Issues;

12.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Customer may extend the Testing Strategy Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

12.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.

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

13. ISSUE OF SATISFACTION CERTIFICATE

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

- 13.1.1 the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 13.1.2 performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.1 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Schedule 3 (Charging, Payment and Invoicing).
- 13.1 If a Milestone is not Achieved, the Customer shall promptly issue a report to the Supplier setting out:
- 13.3.1 the applicable Test Issues; and
 - 13.3.2 any other reasons for the relevant Milestone not being Achieved.
- 13.1 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue a Satisfaction Certificate.
- 13.1 If there is one or more Material Test Issue(s), the Customer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 13.1 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- 13.6.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Customer within ten (10) Working Days of receipt of the Customer's report pursuant to paragraph 12.1 of this Schedule); and
 - 13.6.2 where the Customer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – EXAMPLE SEVERITY LEVELS

1. SEVERITY 1 TEST ISSUE

- 13.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.

SEVERITY 2 TEST ISSUE

- 13.1 This is an error for which, as reasonably determined by the Customer, there is no practicable workaround available, and which:
- 13.8.1 causes a Component to become unusable;
 - 13.8.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 13.8.3 has an adverse impact on any other Component(s) or any other area of the Services;

SEVERITY 3 TEST ISSUE

- 13.1 This is an error which:
- 13.9.1 causes a Component to become unusable;
 - 13.9.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 13.9.3 has an impact on any other Component(s) or any other area of the Services;
- but for which, as reasonably determined by the Customer, there is a practicable workaround available;

SEVERITY 4 TEST ISSUE

- 13.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and

SEVERITY 5 TEST ISSUE

- 13.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2: TEST CERTIFICATE

To: eLocker Limited
From: National Highways Limited
[insert Date dd/mm/yyyy]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [Insert description of the relevant Deliverables/Milestones]

We refer to the agreement ("**Agreement** ") relating to the provision of the Services between National Highways Limited ("**Customer**") and [insert Supplier name] ("**Supplier**") dated [insert Commencement Date dd/mm/yyyy].

The definitions for terms capitalised in this certificate are set out in this Agreement. [We confirm that all of Deliverables listed above have been tested successfully in accordance with the Testing Strategy Plan relevant to those Deliverables.]

[OR]

[This Test Certificate is issued pursuant to paragraph 12.1 of Schedule 5 (Testing) of this Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

ANNEX 3: SATISFACTION CERTIFICATE

To: eLocker Limited
From: National Highways Limited
[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone: [Insert description of the relevant Milestones]

We refer to the agreement ("**Agreement** ") relating to the provision of the Services between National Highways Limited ("**Customer**") and [insert Supplier name] ("**Supplier**") dated [insert Commencement Date dd/mm/yyyy].

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

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

[OR]

[This Satisfaction Certificate is granted pursuant to paragraph 13.1 of Schedule 5 (Testing) of this Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 3 (Charging, Payment and Invoicing)]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of **National Highways Limited**

ANNEX 4: TEST SUCCESS CRITERIA

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

Test	Pre-conditions*	Test Success Criteria
End of sprint User Acceptance Tests	All sites installations complete and User Acceptance Tests are completed	All User Acceptance Tests have been passed.
All Users Logged In	All sites installations complete and User Acceptance Tests are completed	All SPs on all sites will have successfully logged into the eLocker Manager Application
Importing all users	All sites installations complete and User Acceptance Tests are completed	All sites will have imported their current users into the database.
Importing all assets	All sites installations complete and User Acceptance Tests are completed	All sites will have imported their devices into the database and assigned them to their initial locker/user location.
SP Training	All sites installations complete and User Acceptance Tests are completed	All SPs will have passed the required training program.
Access and download reports	All sites installations complete and User Acceptance Tests are completed	All sites to confirm the Analytics and Reports are visible and active on the system.
Help Centre & Support	All sites installations complete and User Acceptance Tests are completed	All sites to confirm access to the Help Centre articles and ticket request forms.

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

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

CPP Milestone Charge No.	Test	Test Success Criteria
12 Months after ATP	User Acceptance Tests	All User Acceptance Tests shall have been passed for a period of 12 Months.
Batteries Health	Check battery level of all locks and replace batteries on any with <80%.	All locks should be indicating >80% life remaining.
SLA (Service Level Agreement)	Review all support ticket response times against the SLA.	All tickets should meet the SLA requirements. (Any credits can be applied against payment).

SCHEDULE 6 - SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. SCOPE

1.1 This Schedule 6 (Service Levels, Service Credits and Performance Monitoring) describes:

- 1.1.1 Service Levels which the Supplier is required to achieve when providing the Services;
- 1.1.2 the mechanism by which Service Level Failures and Critical Service Level Failures will be managed;
- 1.1.3 the Service Levels Thresholds which will apply to each Service Level; and
- 1.1.4 the method by which the Supplier's performance in the provision by it of the Services will be monitored.

1.2 This Schedule comprises:

- 1.2.1 Part A: Service Levels and Service Credits;
- 1.2.2 Annex 1 to Part A - Service Levels and Service Credits Table;
- 1.2.3 Annex 2 to Part A – Critical Service Level Failure;
- 1.2.4 Part B: Performance Monitoring; and
- 1.2.5 Annex 1 to Part B: Collaborative Performance Framework.

PART A: SERVICE LEVELS AND SERVICE CREDITS

1. GENERAL PROVISIONS

- 1.1 The Supplier shall provide a proactive contract manager to ensure that all Service Levels are achieved to the highest standard throughout the Term.
- 1.2 The Supplier shall provide a managed service through the provision of a dedicated service delivery manager where required on matters relating to:
 - 1.2.1 [Supply performance]
 - 1.2.2 [Quality of Services;]
 - 1.2.3 [Customer support];
 - 1.2.4 [Complaints handling;] and
 - 1.2.5 [Accurate and timely invoices].
- 1.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Schedule will result in Service Credits becoming due to the Customer.

2. PRINCIPAL POINTS

- 2.1 The objectives of the Service Levels and Service Credits are to:
 - 2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
 - 2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and
 - 2.1.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.
- 2.2 The performance of the Supplier shall be measured from two perspectives:
 - 2.2.1 the Collaborative Performance Framework (as referred to in Annex 1 of Part B); and
 - 2.2.2 Service Level Performance Measures set out in the table in Annex 1 to this Part A
- 2.3 No Service Credits apply to the Collaborative Performance Framework, but the Supplier shall be required to produce and comply with a Rectification Plan, as set out in paragraph 4 of Part B.

3. SERVICE LEVELS

- 3.1 Annex 1 to this Part A of this Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of this Agreement by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Schedule ("**Service Level Performance**

Criteria”) and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

3.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.

3.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Term:

3.4.1 is likely to or fails to meet any Service Level Performance Measure or

3.4.2 is likely to cause or causes a Critical Service Failure to occur,

55.2.1 the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under **Clause 12 (Service Levels and Service Credits)**, of this Agreement may:

(a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and

(b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or

(c) if a Service Level Failure has occurred, deduct from the Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Schedule; or

(d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with **Clause 13 (Critical Service Level Failure)** of this Agreement including subject, for the avoidance of doubt, the proviso in **Clause Error! Reference source not found.** of this Agreement in relation to Material Breach).

3.5 Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.

4. SERVICE CREDITS

4.1 Annex 1 to Part A of this Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Schedule, shall be a recurrent period of one (1) Month during the Term (“**Service Period**”).

- 4.2 Annex 1 to Part A of this Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
- 4.3 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 4.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Schedule.

5. NATURE OF SERVICE CREDITS

- 5.1 The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

6. SERVICE CREDIT CAP

- 6.1 For the purposes of this Agreement the “**Service Credit Cap**” means **15%** of the Operational Charges;

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE

DEFINITIONS USED IN THIS ANNEX: 1

“Available”
<p>“Downtime”</p> <p>Any period of time during which any of the Software and/or the Services (as applicable) are not Available.</p>
<p>“End User”</p> <p>Any person authorised by the Customer to use the Software and/or the Services (as applicable).</p>
<p>“Priority Severity Level 1” or “P1”</p> <p>An Incident which, in the reasonable opinion of the Customer:</p> <ul style="list-style-type: none"> a. constitutes a loss of the Service which prevents a large group of End Users from working; b. has a critical impact on the activities of the Customer; c. causes significant financial loss and/or disruption to the Customer; or d. results in any material loss or corruption of Customer Data; <p><i>Non-exhaustive examples:</i></p> <p>a loss of power to a data centre causing failure of Services or Software; or a failure of the Services or Software to provide user authentication service.</p>
<p>“Priority Severity Level 2” or “P2”</p> <p>An Incident which, in the reasonable opinion of the Customer has the potential to:</p> <ul style="list-style-type: none"> a. have a major (but not critical) adverse impact on the activities of the Customer and no workaround acceptable to the Customer is available; b. have a major (but not critical) adverse impact on the activities of the Customer and no workaround acceptable to the Customer is available; or c. cause a financial loss and/or disruption to the Customer which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure; <p><i>Non-exhaustive examples:</i></p> <p>corruption of organisational database tables; or loss of ability to update Customer Data.</p>
<p>“Priority Severity Level 3” or “P3”</p> <p>An Incident which, in the reasonable opinion of the Customer has the potential to:</p> <ul style="list-style-type: none"> a. have a major adverse impact on the activities of the Customer which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Customer; or

<p>b. have a moderate adverse impact on the activities of the Customer; <i>Non-exhaustive example:</i> inability to access data for a class of customers.</p>
<p>“Priority Severity Level 4” or “P4”</p> <p>An Incident which, in the reasonable opinion of the Customer has the potential to have a minor adverse impact on the provision of the Services to End Users or which is cosmetic and, as such, does not undermine the End User’s confidence in the information being displayed; <i>Non-exhaustive example:</i> inability to access data for a single customer spelling error; or misalignment of data on screen display.</p>
<p>“Incident”</p> <p>An automated (via alarms or events) or manually (via users) reported occurrence of a failure to deliver any part of the Services, or of the Software to perform, in accordance with the relevant specifications and requirements contained in Schedule 2 (Services) and Documentation</p>
<p>“Resolution”</p> <p>Either: (i) the root cause of the Incident has been removed and the Services and Software are being provided in accordance with the relevant specifications and requirements contained in Schedule 2 (Services) and Documentation; or (ii) the Customer has been provided with a workaround in relation to the Incident deemed acceptable by the Customer, and “Resolved” shall construed accordingly.</p>
<p>“Service Request”</p> <p>A pre-defined and standardised activity agreed by the Customer to be supplied as part of the Supplier’s service catalogue. Examples include; information and / or action requests to the supplier’s customer service desk, access management requests, requests for information or guidance, requests for amended user permissions, requests for access to a pre-existing system or an additional module or feature, and responding to complaints or compliments.</p>
<p>“Defect”</p> <p>a. Any error, damage or defect in the manufacturing or release of a Deliverable; b. Any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; c. Any failure of any Deliverable to provide the performance, features and functionality specified in the Schedule 2 (Services) or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or</p>

d. Any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in **Schedule 2 (Services)** or the Documentation (including any adverse effect on response times) regardless of whether or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria.

“Tested Package Fix”

An update provided by the Supplier to rectify a Defect in the Supplier Solution outside of the Supplier’s planned/schedules cycle of Software releases or Permitted Maintenance, which:

- (a) fully resolves the root cause of the Defect;
- (b) does not generate another Supplier Attributable Defect;
- (c) does not generate a Defect in the Customer System that could have been reasonably foreseen; and
- (d) does not generate a Defect in the systems of third parties that could have been reasonably foreseen.

Service Levels and Service Credits will be applied in accordance with the table below:

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
The supplier will provide a service / help desk function that is available, at a minimum, between the hours of 08.30 to 17.00 (Monday to Friday).	Services Availability	<p>at least 99.45% Availability at all times</p> <p>99.45 % Availability results in the following periods of allowed Downtime</p> <p>Daily: 7m 55s</p> <p>Weekly: 55m 26s</p> <p>Monthly: 4h 1M 3s</p> <p>Quarterly: 12h 3m 10s</p> <p>Yearly: 2d 0h 12m 43s</p>	Monthly	<p>96.70% Availability required to avoid breaching the Service Level Threshold. This is calculated as 1 day allowed Downtime per month,</p> <p>(1440 minutes a month in a 30-day month).</p>	<p>0.007% Service Credit gained for each minute under the specified Service Level Performance Measure i.e. If the monthly actual Downtime has been measured at 1500 minutes, the calculation will be:</p> <p>1500 less 240 = 1260 minutes multiplied by 0.007% of the Charges for the Service Period (one month) to reflect the Service Level Failure.</p>

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
		Which for calculations is the equivalent of 240 Minutes in a 30 day month			
Excluding service help desk and field engineering services, the Software and Services shall be Available between the hours of 08.30 to 17.00 (Monday to Friday).	Services Availability	at least 99.45% Availability at all times 99.45 % uptime / Availability results in the following periods of allowed Downtime Daily: 7m 55s Weekly: 55m 26s Monthly: 4h 1M 3s Quarterly: 12h 3m 10s Yearly: 2d 0h 12m 43s	Monthly	96.70% Availability required to avoid breaching the Service Level Threshold. This is calculated as 1 day allowed Downtime per month, (1440 minutes a month in a 30-day month).	0.007% Service Credit gained for each minute under the specified Service Level Performance Measure i.e. If the monthly actual Downtime has been measured at 1500 minutes, the calculation will be: 1500 less 240 = 1260 minutes multiplied by 0.007% of the Charges for the Service Period (one month) to reflect the Service Level Failure.

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
		Which for calculations is the equivalent of 240 Minutes in a 30 day month			
Priority Severity Level 1 (P1) Incident Resolution - within 4 hours, working between the hours of 08.30 to 17.00 (Monday to Friday).	Services Availability	100% of Priority Severity Level 1 Incidents Resolved within 4 hours. I.e. if 5 P1 Incidents were raised and 1 is delayed beyond 4 hours, then the Service Credit will apply to the 1 that is not Resolved within 4 hours.	Monthly	No Priority Level 1 Incidents not Resolved within 6 hours	For each Priority Severity Level 1 Incident 1% Service Credit gained for every hour over the Service Level Performance Measure until Resolved I.e. if a P1 Incident is Resolved in 8 hours, the calculation will be 4 multiplied by 1% of the of the Charges for the Service Period to reflect the Service Level Failure.
The Number of P1 Incidents per Service Period shall not exceed 1	Services Availability	No more than 1 actual P1 Incidents occur per Service Period. i.e. if 2 P1 Incidents occur, then the Service Credit shall apply to anything that exceeds 1	Monthly	Maximum of 3 P1 Incidents per Service Period	1% Service Credit gained for each P1 Incident over the Service Level Performance Measure. I.e. if 2 P1 Incidents occur, the calculation will be 1 multiplied by 1% of the Charges for the Service Period to reflect the Service Level Failure.

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
Priority Severity Level 2 Incident Resolution - within 8 hours working between the hours of 08.30 to 17.00 (Monday to Friday).	Services Availability	100% of Priority Severity Level 2 Incidents Resolved within 8 hours. I.e. if 5 P2 Incidents were raised and 1 is delayed beyond 8 hours, then the Service Credit will apply to the 1 that is not Resolved within 8 hours.	Monthly	No Priority Level 2 Incidents not Resolved within 12 hours	For each Priority Severity Level 2 Incident 0.3% Service Credit gained for each hour over the specified Service Level Performance Measure I.e. the calculation will be for every hour Resolution is delayed beyond the initial 8 hours. So if a P2 Incident is Resolved in 9 hours, the calculation will be 1 multiplied by 0.3% of the Charges for the Service Period to reflect the Service Level Failure.
The Number of P2 Incidents per Service Period shall not exceed 5	Services Availability	No more than 5 actual P2 Incidents occur per Service Period. i.e. if 6 P2 Incidents occur, then the Service Credit shall apply to anything that exceeds 5	Monthly	Maximum of 10 P2 Incidents per Service Period	0.3% Service Credit gained for each P2 Incident over the Service Level Performance Measure. I.e. if 6 P2 Incidents occur, the calculation will be 1 multiplied by 0.3% of the Charges for the Service Period to reflect the Service Level Failure.

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
Priority Severity Level 3 Incident Resolution - within 12 hours: between the hours of 08.30 to 17.00 (Monday to Friday).	Services Availability	100% of Priority Severity Level 3 Incidents Resolved within 12 hours. I.e. if 5 P3 Incidents were raised and 1 is delayed beyond 12 hours, then the Service Credit will apply to the 1 that is not Resolved within 12 hours.	Monthly	No Priority Level 3 Incidents not Resolved within 18 hours	0.2% Service Credit gained for each hour over the specified Service Level Performance Measure I.e. the calculation will be for every hour Resolution is delayed beyond the initial 12 hours. So if a P3 Incident is Resolved in 14 hours, the calculation will be 2 multiplied by 0.2% of the Charges for the Service Period to reflect the Service Level Failure.
Priority Severity Level 4 Incident Resolution - within 30 calendar days	Services Availability	100% of Priority Severity Level 4 Incidents Resolved within 30 days. I.e. if 5 P4 Incidents were raised and 1 is delayed beyond 30 days, then the Service Credit will apply to the 1 that is not Resolved within 30 calendar days.	Monthly	No Priority Level 4 Incidents not Resolved within 60 calendar days	0.2% Service Credit gained for each calendar day over the specified Service Level Performance Measure I.e. the calculation will be for every calendar day Resolution is delayed beyond the initial 30 calendar days. So if a P4 Incident is Resolved in 32 calendar days, the calculation will be 2 multiplied by 0.2% of the Charges for the

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
					Service Period to reflect the Service Level Failure.
Service Request fulfilment - within 5 Working Days	Services Availability	100% of Service Requests are fulfilled within 5 Working Days. I.e. if 5 Service Requests were raised and 1 is delayed beyond 5 Working Days, then the Service Credit will apply to the 1 that is delayed	Monthly	No Service Requests remain unfulfilled after 10 Working Days	0.2% Service Credit gained for each Working Day that a Service Request is delayed beyond 5 Working Days. i.e. the calculation will be for every day beyond the initial 5 Working Days. So if fulfilment of two Service Requests exceed 5 Working Days, with one taking 6 Working Days to fulfil and the other taking 8 Working Days to fulfil, the calculation will be 1 day multiplied by 0.2% and 3 days multiplied by 0.2% of the of the Charges for the Service Period to reflect the Service Level Failure

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
Software problem management P1 root cause analysis reports to be published with actions within 3 Working Days of opening the Incident Resolution	Services Availability	100% of all Software problem management P1 root cause analysis reports are published to the Customer within 3 Working Days of opening the Incident Resolution i.e. if there are 2 P1 Incidents and 1 report is produced on day 4, then the Service Credit applies to the 1 that is late	Monthly	No Software problem management P1 root cause analysis report not published within 5 Working Days	0.5% Service Credit gained for each Working Day that a Software problem management P1 root cause analysis report is delayed beyond 3 Working Days. i.e. the calculation will be for every day beyond the initial 3 Working Days. So if two reports exceed 3 Working Days, with one taking 6 Working Days to publish and the other taking 8 Working Days to publish, the calculation will be 3 Working Days multiplied by 0.5% and 5 Working Days multiplied by 0.5% of the of the Charges for the Service Period to reflect the Service Level Failure
Software problem management P2 root cause analysis reports to be published with actions within 5 Working Days of	Services Availability	100% of all Software problem management P2 root cause analysis reports are published to the Customer within 5 Working Days of opening	Monthly	No Software problem management P2 root cause analysis report not published within 7 Working Days	0.3% Service Credit gained for each Working Day that a Software problem management P1 root cause analysis report is delayed beyond 5 Working Days.

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
opening the Incident Resolution		the Incident Resolution i.e. if there are 2 P2 Incidents and 1 report is produced on day 6, then the Service Credit applies to the 1 that is late			i.e. the calculation will be for every day beyond the initial 5 Working Days. So if two incidents exceed 5 Working Days, with one taking 6 Working Days to publish and the other taking 8 Working Days to publish, the calculation will be 1 Working Day multiplied by 0.3% and 3 Working Days multiplied by 0.3% of the of the Charges for the Service Period to reflect the Service Level Failure
For P1 Incidents attributed to the Supplier Solution, the Supplier shall provide a Tested Package Fix within ten (10) Working Days	Services Availability	100% of all Tested Package Fixes are released within 10 Working Days of Incident Resolution	Monthly	No Tested Package Fixes are released within 10 Working Days of Incident Resolution	0.3% Service Credit gained for each Working Day that a Tested Package Fix is delayed beyond 10 Working Days.

	Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Measured Time	Service Level Threshold	
For P2 Incidents attributed to the Supplier Solution, the Supplier shall provide a Tested Package Fix within ten (20) Working Days	Services Availability	100% of all Tested Package Fixes are released within 20 Working Days of Incident Resolution	Monthly	No Tested Package Fixes are released within 20 Working Days of Incident Resolution	0.3% Service Credit gained for each Working Day that a Tested Package Fix is delayed beyond 20 Working Days.

Table 1: Service Levels and Service Credits Table Above

Training

Training sessions shall be planned and shall set out clearly the aims and objectives of the session. All training shall be carried out by personnel having sufficient experience of the system and knowledge of the Customer's asset management processes.

Tasks include:

- provision of all training materials,
- organisation organise attendees and venues.
- feedback forms

The training feedback form shall request scoring of the following items:

- Organisation
- Content
- Notes
- Presentation
- Relevance

The scoring terms against each item shall be

- very poor (1),
- poor (2),
- good (3),
- very good (4),
- excellent (5).

Comments shall also be requested.

The feedback form shall also contain the following information:

- Course title,
- Date,
- Venue
- Tutor

The Service Credits shall be calculated on the basis of the following formula:

[Example:

Formula: x% (Service Level Performance Measure) - x% (actual Service Level performance)	=	x% of the Charges payable to the Customer as Service Credits to be
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Worked example: 98% (e.g. Service Level Performance Measure requirement for Service Level Performance Criterion of accurate and timely billing to Customer) - 75% (e.g. actual performance achieved against this Service Level Performance Criterion in a Service Period)

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deducted from the next Valid Invoice payable by the Customer
23% of the Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer]

ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

In the event of the Supplier's performance against any one Service Level Performance Criterion failing to meet the Service Level Performance Measure for a period of 3 successive Service Periods or whereby it falls below the Service Level Threshold for a period of 1 Service Period or more, the Customer may as it deems appropriate for the affected Services:

Reduce and or remove the affected Services via the Variation Procedure;

PART B: PERFORMANCE MONITORING

2. PRINCIPAL POINTS

- 6.2 Part B to this Schedule provides the methodology for monitoring the provision of the Services:
 - 6.2.1 to ensure that the Supplier is complying with the Service Levels; and
 - 6.2.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("Performance Monitoring System").
- 6.3 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

REPORTING OF SERVICE FAILURES

- 6.4 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 1.2 of Part B of this Schedule above.

PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 6.5 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 6.5.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 6.5.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 6.5.3 any Critical Service Level Failures and details in relation thereto;
 - 6.5.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 6.5.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate;
 - 6.5.6 a review and the score of the performance in line with the Collaborative Performance Framework; and
 - 6.5.7 such other details as the Customer may reasonably require from time to time.
- 6.6 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis (unless

otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 6.6.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 6.6.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 6.6.3 be attended by the Supplier's Representative and the Customer's Representative; and
 - 6.6.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 6.7 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 6.8 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

7. COLLABORATIVE PERFORMANCE FRAMEWORK

- 7.1 If the Supplier's performance is scored as unsatisfactory through the Collaborative Performance Framework report, using the agreed scoring assessment the Supplier shall produce a Rectification Plan in accordance with **Clause 36.2 (Rectification Plan Process)** of this Agreement.

SATISFACTION SURVEYS

- 7.2 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 7.3 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Agreement.
- 7.4 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to **Clause 17 (Continuous Improvement)** of this Agreement.

ANNEX 1 TO PART B: Collaborative Performance Framework

1. DEFINITIONS

In this Annex, the following definitions shall apply:

“Measures” the measures within the Collaborative Performance Framework set out in Table 1 of this Annex 1 to Part B; and

“Themes” the themes within the Collaborative Performance Framework set out in Table 1 of this Annex 1 to Part B.

2. Performance indicators in the Collaborative Performance Framework (CPF) are categorised into Themes and Measures examples of which are set out in Table

1 (as may be updated from time to time by the Customer as referenced in paragraph 3 below):

Theme	Measures
[Health and Safety]	<ul style="list-style-type: none"> • Effective management of workforce health and safety • Designing for safety • Minimise accidents • Health and safety management
Collaboration	<ul style="list-style-type: none"> • Implementation of collaborative communications
Customer and Stakeholder	<ul style="list-style-type: none"> • Effectiveness of engagement with external stakeholders
Sustainability	<ul style="list-style-type: none"> • Manage environmental sustainability • Manage social sustainability and compliance with the Modern Slavery Act • Maintain economic sustainability • Demonstrate improvements in time and cost through innovation
Quality	<ul style="list-style-type: none"> • Quality management and key deliverable
Time	<ul style="list-style-type: none"> • Forecast timescales accurately (including change management)
Cost	<ul style="list-style-type: none"> • Accuracy of Supplier cost projections
Client Feedback	<ul style="list-style-type: none"> • Health and safety • Collaboration • Customer and stakeholder • Sustainability • Quality • Time • Costs]

Table 1: Example Themes and Measures

3. The framework to assess the Supplier's performance against the Measures shall be the Collaborative Performance Framework, which may be updated from time to time by the Customer. The Collaborative Performance Framework supports the Customer in driving continuous improvement by benchmarking

performance, identifying best practice and areas for improvements, learning lessons from experience and 360-degree feedback.

4. The initial indicators for each Measure are set out in the relevant sections of the Collaborative Performance Framework.
5. To support the measurement of the performance of the Supplier, the Supplier shall on a quarterly basis (except in relation to health and safety which shall be on a Monthly basis), with the first reviews being submitted three (3) Months (or in relation to health and safety, one (1) Month) after the Commencement Date:
 - 5.1 collect and assemble data about their performance against the indicators for the Measures using the Customer's standard format;
 - 5.2 submit to the Customer Representative a score for each of the Measures that is self-determined in accordance with the Collaborative Performance Framework, with supporting evidence to justify the score; and
 - 5.3 review and agree the scores submitted with the Customer Representative (both Parties acting reasonably).
6. If the Supplier achieves an agreed score of less than six (6) in respect of any Measure, the Supplier shall produce and comply with a Rectification Plan in accordance with the Rectification Plan Process.
7. The Supplier shall report its performance in respect of the Collaborative Performance Framework within the Performance Monitoring Reports and the Performance Review Meetings.
8. Immediately following each anniversary of the Commencement Date, the Supplier shall submit proposals for improvements to its performance against each of the Collaborative Performance Framework Measures and the improvement in score that it intends to achieve for the following twelve (12) Service Periods in order to support the requirement for continuous improvements in its performance pursuant to **Clause 17 (Continuous Improvement)** of this Agreement.
9. The Supplier must obtain the latest version of the relevant CPF toolkit from the Customer's Supply Chain Portal.

<https://highways.sharepoint.com/sites/SupplyChainPortal/SitePages/Home.aspx>

To request an account contact:

Digial.Communications@highwaysengland.co.uk

SCHEDULE 7 - STANDARDS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

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

2. GENERAL

- 2.1. Throughout the Term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Customer’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Variation Procedure.
- 2.2. Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Customer’s receipt, of the Services is explained to the Customer (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3. Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Customer and shall be implemented within an agreed timescale.
- 2.4. Where there is any conflict between this **Schedule 7** and any provision of **Schedule 2 (Services Description)**, then the latter shall prevail.
- 2.5. This Schedule contains the following sections:
 - 2.5.1. Technology and Digital Services Practice;
 - 2.5.2. Open Data Standards & Standards Hub;
 - 2.5.3. Technology Architecture Standards;
 - 2.5.4. Accessible Digital Standards;
 - 2.5.5. Service Management Standards;
 - 2.5.6. Health, Safety and Wellbeing Standards

- 2.5.7. Environmental Standards;
- 2.5.8. Hardware Safety Standards;
- 2.5.9. Technical Standards;
- 2.5.10. Project Management Standards;
- 2.5.11. Quality Management Standards;
- 2.5.12. Security Standards;
- 2.5.13. Collaboration Standards;
- 2.5.14. Data Standards;
- 2.5.15. Customer's Policies and Working Practices;
- 2.5.16. Personal Data Retention Policies.

3. TECHNOLOGY AND DIGITAL SERVICES PRACTICE

- 3.1. The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's GDS (Government Digital Service) service standard <https://www.gov.uk/service-manual/service-standard>.

4. OPEN DATA STANDARDS & STANDARDS HUB

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

under paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Customer otherwise agrees in writing.

5. TECHNOLOGY ARCHITECTURE STANDARDS

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

6. ACCESSIBLE DIGITAL STANDARDS

- 6.1. The Supplier shall comply with (or with equivalents to):

the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA, which is documented at <https://www.w3.org/TR/WCAG21/>; an ISO/IEC 13066-1: 2011 (Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability).

7. SERVICE MANAGEMENT STANDARDS

- 7.1. Subject to paragraphs 2 to 4 (inclusive), the Supplier shall comply with relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following or their equivalents:

7.1.1. ITIL 4, 2019;

7.1.2. ISO/IEC 20000-1:2018 (Information Technology — Service management — Service management system requirements);

7.1.3. ISO/IEC 20000-2:2019 (Information technology — Service management — Guidance on the application of service management systems);

7.1.4. ISO 10007:2017 (Quality management — Guidelines for configuration management);

7.1.5. ISO 22313:2020 (Security and resilience - Business continuity management systems - Guidance on the use of ISO 22301), ISO/IEC 27031:2011 (Information technology — Security techniques — Guidelines for information and communication technology readiness for business continuity), ISO 22301:2019 (Security and resilience - Business continuity management – Requirements) and ISO/IEC 24762:2008 (Information technology — Security techniques — Guidelines for information and communications technology disaster recovery services) in the provision of Service Continuity Plans and Service Continuity Services; and

7.1.6. ISO 8601-1:2019 (Date and time – Representations for information interchange – Basic rules) and ISO 8601-2:2019 (Date and time – Representations for information interchange – Extensions).

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

8. HEALTH, SAFETY AND WELL-BEING STANDARDS

8.1. The Supplier shall use and comply with the principles of ISO 45001:2018 (Occupational health and safety management systems - Requirements with guidance for use).

9. ENVIRONMENTAL STANDARDS

9.1. The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.

9.2. The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2013 and subsequent replacements.

9.3. The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.

9.4. The Supplier shall comply with the EU Code of Conduct on Data Centres' Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.

9.5. The Supplier shall comply with the Customer and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document “Greening Government: ICT Strategy issue (March 2011)” at <https://www.gov.uk/government/publications/greening-government-ict-strategy>

10. HARDWARE SAFETY STANDARDS

10.1. The Supplier shall comply with those standards relevant to the provision of the Services, including the following or their equivalents:

- 10.1.1. any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 62368-1:2014+A11:2017 (Audio/video, information and communication technology equipment – Safety requirements) or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - 10.1.2. any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to BS EN 60825-1:2014 (Safety of laser products – Equipment classification and requirements) or any subsequent replacements;
 - 10.1.3. any new apparatus for connection to any telecommunication network, required for the delivery of the Services, shall conform to BS EN 62949:2017 (Particular safety requirements for equipment to be connected to information and communication technology networks) or any subsequent replacements; and
 - 10.1.4. BS 7671 (Requirements for Electrical Installations – IET Wiring Regulations – 18th Edition).
- 10.2. Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

11. TECHNICAL STANDARDS

- 11.1. Where there is any conflict between the open standards principles and Supplier's enterprise architecture principles, then the former shall prevail.
- 11.2. The Supplier shall follow the principles of the API documents provided in the Data Room or any subsequent replacements where it is necessary to provide an interface with the Customer System.
- 11.3. Any other technical standards used by the Supplier shall be compliant with open standards principles.

12. PROJECT MANAGEMENT STANDARDS

- 12.1. The Supplier shall use and comply with the principles of best practice project and contract management methodologies such as: MSP® (Managing Successful Programmes), M_o_R® (Management of Risk); PRINCE2® (Projects in Controlled Environments), Association for Project Management (APM) or equivalent; in each case, suitably adapted to meet the Supplier's obligations under this Agreement.

13. QUALITY MANAGEMENT STANDARDS

13.1. The Supplier shall apply quality management standards as set out in Schedule 12 (Quality Plans).

14. SECURITY STANDARDS

14.1. The Supplier shall apply the following security standards to meet the Customer Requirements:

14.1.1. ISO/IEC 27001:2017 (Information technology - Security techniques - Information security management systems – Requirements);

14.1.2. ISO/IEC 27002:2017 (Information technology - Security techniques - Code of practice for information security controls);

14.1.3. ISO/IEC 27003:2017 (Information technology - Security techniques - Information security management systems – guidance);

14.1.4. ISO/IEC 27004:2016 (Information technology - Security techniques - Information security management - Monitoring, measurement, analysis and evaluation);

14.1.5. ISO/IEC 27005:2018 (Information technology — Security techniques — Information security risk management);

14.1.6. Cyber Essentials Plus as described at <https://www.ncsc.gov.uk/cyberessentials/overview>;

14.1.7. The Minimum Cyber Security Standard, version 1.0 – June 2018 at <https://www.gov.uk/government/publications/the-minimum-cyber-security-standard>;

14.1.8. Cloud security guidance, version 1.0 – November 2018 at <https://www.ncsc.gov.uk/collection/cloud-security>; and

14.1.9. HMG Security Policy Framework – May 2018 at <https://www.gov.uk/government/publications/security-policy-framework>

14.1.10. HMG Baseline Personnel Security Standard, version 6.0 – May 2018 at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/hmg_baseline_personnel_security_standard_-_may_2018.pdf or any subsequent replacements.

15. COLLABORATION STANDARDS

15.1. The Supplier shall use and comply with the principles of ISO 44001:2017 (Collaborative business relationship management systems - Requirements and framework).

16. DATA STANDARDS

16.1. The Supplier shall use suitable open, non-proprietary data and metadata standards for all other purposes.

16.2. Any use of proprietary data standards or extensions to open standards shall be agreed with the Customer.

17. THE CUSTOMER'S POLICIES AND WORKING PRACTICES

17.1. The Supplier shall comply with those policies and working practices listed in Annex 1 to this Schedule or others as shall be agreed from time to time between the Parties.

18. PERSONAL DATA RETENTION POLICIES

18.1. The Supplier shall comply with the Customer's data retention policy in Annex 2 to this Schedule.

ANNEX 1
CUSTOMER'S BUSINESS POLICIES AND PROCEDURES

NOT USED

ANNEX 2 – PERSONAL DATA RETENTION POLICY

1. OVERVIEW

This document sets out the retention periods for data processed by the Supplier for delivery of the Services. The retention periods set out in this document reflect current requirements which may be subject to change.

2. PERSONAL DATA RETENTION BY DATA ITEM

Data Item	Retention Period	Description
Users' personal data from use of the Services	up to 1 year after the last use of the Services	e.g. Service subscriber data.
[Users' personal data arising from enquiries received by the Customer's contact centre.	up to 2 years after the last correspondence for an enquiry	Inbound and outbound electronic correspondence.

SCHEDULE 8 - SECURITY

1. DEFINITIONS

1.1 In this Schedule 8, the following definitions shall apply:

"Baseline Security Requirements"	means those requirements outlined in Annex 1 of this Schedule 8;
"Breach of Security"	means the occurrence of: <ul style="list-style-type: none">a) any unauthorised access to or use of the Services, the Sites, the ICT Environment 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 Agreement ; and/orb) 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 Agreement, in either case as more particularly set out in: <ul style="list-style-type: none">(1) the Baseline Security Requirements in Annex 1 to this Schedule 8; and(2) the Security Policy in Annex 2 to this Schedule 8;
"ISMS"	the information security management system developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Schedule 8;
"Security Policy Framework"	the HMG Security Policy Framework https://www.gov.uk/government/publications/security-policy-Framework ; and
"Security Tests"	has the meaning given in paragraph 6.1 of this Schedule (Testing of the ISMS).

2. INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and the Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.
- 2.2 The Customer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.3 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

- 2.4 The Supplier shall use as a minimum, Good Industry Practice, in the day to day operation of any system holding, transferring or processing Customer Data and any system that could directly or indirectly have an impact on that information, and shall ensure that the Customer Data remains under the effective control of the Supplier at all times.
- 2.5 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and system and on request shall supply this document as soon as practicable to the Customer.
- 2.6 The Customer and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Customer's security provisions represents an unacceptable risk to the Customer requiring immediate communication and co-operation between the Parties.

3. ISMS

- 3.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Customer for the Customer's Approval an information security management system for the purposes of this Agreement which:
 - 3.1.1 if required by the Implementation Plan, shall have been tested in accordance with **Schedule 5 (Testing)**; and
 - 3.1.2 shall comply with the requirements of paragraphs 3.3 to 3.5 of this **Schedule 8 (Security)**.
- 3.2 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 and that the Supplier shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
 - 3.3.1 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System, the Customer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Agreement;
 - 3.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7; and
 - 3.3.3 at all times provide a level of security which:
 - (a) is in accordance with Good Industry Practice, Law and this Agreement;
 - (b) complies with the Baseline Security Requirements;
 - (c) complies with the Security Policy;
 - (d) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4);

- (e) meets any specific security threats to the ISMS, the Services and/or Customer Data;
 - (f) addresses issues of incompatibility with the Supplier's own organisational security policies;
 - (g) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 7; and
 - (h) complies with the Customer's ICT policies.
- 3.3.4 document the security incident management processes and incident response plans;
- 3.3.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Customer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
- 3.3.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Customer in advance of issue of the relevant Security Management Plan).
- 3.4 Subject to **Clause 33 (Security And Protection of Information)** of this Agreement the references to standards, guidance and policies set out in paragraph 3.3 of this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Schedule, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Customer pursuant to paragraph 3.1 of this Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 1.1 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply

with any of the requirements set out in paragraphs 3.3 to 3.5 of this Schedule shall be deemed to be reasonable.

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

4. SECURITY MANAGEMENT PLAN

- 4.1 Within twenty (20) Working Days after the Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 4 of this Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 3.2 of this Schedule.

- 4.2 The Security Management Plan shall:

- 4.2.1 be based on the initial Security Management Plan set out in Annex 3 (Security Management Plan);
- 4.2.2 comply with the Baseline Security Requirements and Security Policy;
- 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule 8 is complied with by the Supplier;
- 4.2.4 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Customer with access to the Services, processes associated with the delivery of the Services, the Customer Premises, the Sites, the Supplier System, the Customer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Customer Confidential Information and Customer Data) and any system that could directly or indirectly have an impact on that information, data and/or Services;
- 4.2.5 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System, the Customer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Agreement ;
- 4.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule 8 (including the requirements set out in paragraph 4.2 of this Schedule);
- 4.2.7 demonstrate that the Supplier's approach to delivery of the Services has minimised the Customer and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offering from the G-Cloud catalogue);

- 4.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the 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 Schedule Annex 1 (Security) to this Schedule 8;
 - 4.2.9 set out the scope of the Customer System that is under the control of the Supplier;
 - 4.2.10 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
 - 4.2.11 be written in plain English in language which is readily comprehensible to the personnel of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule 8.
- 4.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 of this Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Schedule shall be deemed to be reasonable.
- 4.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3 of this Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

5. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier from time to time and at least annually to reflect:
- 5.1.1 emerging changes in Good Industry Practice;
 - 5.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
 - 5.1.3 any new perceived or changed security threats; and
 - 5.1.4 any reasonable request by the Customer.

- 5.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:
- 5.2.1 suggested improvements to the effectiveness of the ISMS;
 - 5.2.2 updates to the risk assessments;
 - 5.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
 - 5.2.4 suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to paragraph 5.4 of this Schedule, any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Schedule, a Customer request, change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.
- 5.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement .

6. TESTING OF THE ISMS

- 6.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall, subject to **Clause 38**, be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Agreement 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. If any such Customer test adversely affects the Supplier's ability to deliver the Services so as to meet the Service

Level Performance Measures, the Supplier shall, subject to **Clause 38**, be granted relief against any resultant under-performance for the period of the Customer test.

- 6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Schedule reveals any actual or potential Breach of Security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 6.5 If any repeat Security Test carried out pursuant to paragraph 6.4 of this Schedule reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Agreement.

7. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001 AND ISO/IEC 27002

- 7.1 The Customer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and ISO/IEC 27002.
- 7.2 If, on the basis of evidence provided by such security audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 or ISO/IEC 27002 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 and ISO/IEC 27002. If the Supplier does not become compliant within the required time then the Customer shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in paragraph 7.2 of this Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 or ISO/IEC 27002 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

8. BREACH OF SECURITY

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

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

8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:

- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
- (b) remedy such Breach of Security or any potential or attempted Breach of Security or protect the integrity of the ISMS against any such Breach of Security or any potential or attempted Breach of Security;
- (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for such period as the Customer, acting reasonably, may specify by written notice to the Supplier;
- (d) prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure;
- (e) supply any requested data to the Customer or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Customer's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and

8.2.2 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, including a root cause analysis where required by the Customer.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy or Baseline Security Requirements or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Customer.

9. VULNERABILITES AND CORRECTIVE ACTION

9.1 The Customer and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Customer's information.

9.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the

agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within sixty (60) Working Days of release, except where:
- 9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
 - 9.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Customer; or
 - 9.3.3 the Customer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
- 9.4 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be upgraded within 6 Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:
- 9.4.1 where upgrading such Supplier COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 Months of release of the latest version; or
 - 9.4.2 is agreed with the Customer in writing.
- 9.5 The Supplier shall:
- 9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
 - 9.5.2 ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

- 9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Term;
 - 9.5.4 pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3.5;
 - 9.5.5 from the date specified in the Security Management Plan provide a report to the Customer within five (5) Working Days of the end of each Month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 9.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
 - 9.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and
 - 9.5.8 inform the Customer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.
- 9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 9, the Supplier shall immediately notify the Customer.
- 9.7 A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

ANNEX 1: BASELINE SECURITY REQUIREMENTS

2. HIGHER CLASSIFICATIONS

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

10. END USER DEVICES

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

11. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

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

of the international commitments it has entered into which have been defined as adequate by the EU Commission.

11.3 The Supplier shall:

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

12. NETWORKING

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

13. SECURITY ARCHITECTURES

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

14. PERSONNEL SECURITY

- 14.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 14.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.

- 14.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Customer Data except where agreed with the Customer in writing.
- 14.4 All Supplier Personnel that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.
- 14.5 Where the Supplier or Sub-Contractors grants increased ICT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When Supplier Personnel no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

15. IDENTITY, AUTHENTICATION AND ACCESS CONTROL

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

AUDIT AND MONITORING

- 15.2 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
- 15.2.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - 15.2.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 15.3 The Supplier and the Customer shall work together to establish any additional audit and monitoring requirements for the ICT Environment.
- 15.4 The Supplier shall retain audit records collected in compliance with this Paragraph 0 for a period of at least 6 Months.

ANNEX 2: SECURITY POLICY

3. SECURITY

The system shall comply with the following security requirements:

- 1.1 A risk assessment shall be carried out and documented to determine the level of cyber-security risk. Noting that the information has a security status of "OFFICIAL".
- 1.2 Items to be assessed shall include, but not be limited to:
 - capacity and scalability
 - network Security
 - resilience and disaster recovery
 - software maintenance
 - hosting facilities
 - development environments and
 - data handling
- 1.3 Following the risk assessment the Supplier shall provide mitigation measures and tests to demonstrate the measures have been successfully implemented. This shall be reported.
- 1.4 The risk assessments shall be reviewed on an annual basis and at any change in services, e.g. the start and end of the Implementation Service.

ANNEX 3: SECURITY MANAGEMENT PLAN

The Security Management Plan shall build on the Risk Assessment process described in Annex 2. It shall describe a quality process of continual improvement and set out clear roles and responsibilities.

The plan shall also provide for a schedule of audits on a regular basis and at key milestones of the project.

SCHEDULE 9 - SOFTWARE

1. SPECIALLY WRITTEN SOFTWARE

Software	Supplier (if an Affiliate of the Supplier)	Details	SaaS (Yes/ No)
NA			

2. SUPPLIER SOFTWARE

Software	Supplier (if an Affiliate of the Supplier)	Details	SaaS (Yes/ No)	Deposited Software (Yes/No)
ELOCKER MANAGER	ELOCKER	ONLINE LOCKER MANAGEMENT SYSTEM	YES	YES

3. THIRD PARTY SOFTWARE

Software	Third Party Supplier	Details	Applicable Licence Terms	SaaS (Yes/ No)	Deposited Software (Yes/No)
NA					

4. CUSTOMER SOFTWARE

Software	Third Party Supplier	Details
NA		

5. OPEN SOURCE SOFTWARE

Software	Third Party Supplier	Details	Applicable Licence Terms
NA			

SCHEDULE 10 - BUSINESS CONTINUITY AND DISASTER RECOVERY

1. DEFINITIONS

1.1 In this Schedule 10, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in 2.2.1(c) of this Schedule;
"Disaster Recovery System"	means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Schedule;
"Supplier's Proposals"	has the meaning given to it in paragraph 6.2.3 of this Schedule;

2. BCDR PLAN

2.1 Within thirty (30) Working Days from the Commencement Date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "**Business Continuity Plan**"); and

(c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and

2.2.2 unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Customer shall:

2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

- 2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.
- 2.4 If the Customer rejects the draft BCDR Plan:
 - 2.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - 2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft BCDR Plan to the Customer for the Customer's Approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. BCDR PLAN: PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 Part A of the BCDR Plan shall:
 - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Customer by a Related Supplier;
 - 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Supplier in each case as notified to the Supplier by the Customer from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
 - 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and

- (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
 - 3.1.9 identify the procedures for reverting to “normal service”;
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer’s business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 for Business Continuity and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement .

4. BCDR PLAN: PART B - BUSINESS CONTINUITY PLAN PRINCIPLES AND CONTENTS

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

- 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
 - 4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the “**Business Continuity Services**”);
 - 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
 - 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. BCDR PLAN: PART C - DISASTER RECOVERY PLAN PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - 5.3.1 the technical design and build specification of the Disaster Recovery System;
 - 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (a) data centre and disaster recovery site audits;
 - (b) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;

- (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) Service recovery procedures; and
 - (j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;
- 5.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
 - 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - 5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
 - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 6.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required,

within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report (a **“Review Report”**) setting out:

- 6.2.1 the findings of the review;
 - 6.2.2 any changes in the risk profile associated with the provision of Services; and
 - 6.2.3 the Supplier's proposals (the **“Supplier's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Customer shall:
- 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.
- 6.4 If the Customer rejects the Review Report and/or the Supplier's Proposals:
- 6.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Agreement Year). Subject to paragraph 7.2 of this Schedule, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers

it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

- 7.2 If the Customer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Customer.

8. INVOCATION OF THE BCDR PLAN

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Customer.

SCHEDULE 11 - EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Ethical Wall Agreement"	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 1;
"Exclusive Assets"	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Schedule;
"Exit Plan"	means the plan produced and updated by the Supplier during the Term in accordance with paragraph 6 of this Schedule;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule for managing the Parties' respective obligations under this Schedule;
"Net Book Value"	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Costumer of even date with this Agreement;
"Non-Exclusive Assets"	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Schedule;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 7.1 of this Schedule;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 7.2 of this Schedule;

"Transferable Assets"	means those of the Exclusive Assets which are capable of legal transfer to the Customer;
"Transferable Contracts"	means the Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in paragraph 10.2.1 of this Schedule;
"Transferring Contracts"	has the meaning given to it in paragraph 10.2.3 of this Schedule.

2. INTRODUCTION

- 2.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Expiry Date and the transfer of service provision to the Customer and/or a Replacement Supplier.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Customer and/or a Replacement Supplier at the Expiry Date.

3. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

- 3.1 During the Term, the Supplier shall:
 - 3.1.1 create and maintain a Register of all:
 - (a) Supplier Assets, detailing their:
 - (i) make, model and asset number;
 - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications); and
 - (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
 - 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier

provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

- 3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
 - 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.
- 3.2 The Supplier shall:
- 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement; and
 - 3.2.2 (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Customer.
- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Schedule which the Supplier proposes to enter into after the Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of Services to which the relevant agreement relates.
- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) Months of the Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- 4.1.1 details of the Service(s);
 - 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 4.1.3 an inventory of Customer Data in the Supplier's possession or control;
 - 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services; and
 - 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
 - 4.1.7 such other material and information as the Customer shall reasonably require,
(together, the "Exit Information").
- 4.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 of this Schedule disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 4.3 The Supplier shall:
- 4.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and
 - 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.
- 4.4 The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) Month period.
- 4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 4.5.1 prepare an informed offer for those Services; and
 - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 5. OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**

- 1.5 The Customer may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

- 1.6 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. The Supplier's cost of entering the Ethical Wall Agreement will be borne solely by the Supplier.

6. EXIT PLAN

- 6.1 The Supplier shall, within three (3) Months after the Commencement Date, deliver to the Customer an Exit Plan which:
- 6.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the partial termination, expiry or termination of this Agreement;
 - 6.1.2 complies with the requirements set out in paragraph 6.3 of this Schedule;
 - 6.1.3 is otherwise reasonably satisfactory to the Customer.
- 6.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:
- 6.3.1 how the Exit Information is obtained;
 - 6.3.2 a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
 - 6.3.3 the management structure to be employed during both transfer and cessation of the Services;
 - 6.3.4 the management structure to be employed during the Termination Assistance Period;
 - 6.3.5 a detailed description of both the transfer and cessation processes, including a timetable;
 - 6.3.6 how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 6.3.7 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 6.3.8 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the

Services following the Expiry Date charged at rates agreed between the Parties at that time;

- 6.3.9 proposals for providing the Customer or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
- 6.3.10 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 6.3.11 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 6.3.12 proposals for the disposal of any redundant Services and materials;
- 6.3.13 procedures to deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to Schedule 16 (Staff Transfer);
- 6.3.14 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- 6.3.15 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

Finalisation of the Exit Plan

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

7. TERMINATION ASSISTANCE

- 7.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least three (3) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 7.1.1 the date from which Termination Assistance is required;
 - 7.1.2 the nature of the Termination Assistance required; and
 - 7.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.
- 7.2 The Customer shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

8. TERMINATION ASSISTANCE PERIOD

- 8.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:
- 8.1.1 continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 7.1 of this Schedule, provide the Termination Assistance;
 - 8.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;
 - 8.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 8.1.2 of this Schedule without additional costs to the Customer;
 - 8.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 8.3; and
 - 8.1.5 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.
- 8.2 Without prejudice to the Supplier's obligations under paragraph 8.1.3 of this Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 8.1.2 of this Schedule without

additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

- 8.3 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

9. TERMINATION OBLIGATIONS

- 9.1 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any partial termination or termination.

- 9.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Supplier shall:

- 9.2.1 cease to use the Customer Data;
- 9.2.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
- 9.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
- 9.2.4 return to the Customer such of the following as is in the Supplier's possession or control:
 - (a) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Agreement;
 - (b) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Customer;
 - (c) any parts of the ICT Environment and any other equipment which belongs to the Customer;
 - (d) any items that have been on-charged to the Customer, such as consumables; and
 - (e) all Customer Property issued to the Supplier under **Clause 30** of this Agreement (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
 - (f) any sums prepaid by the Customer in respect of Services not Delivered by the Expiry Date;

- 9.2.5 vacate any Customer Premises;
- 9.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
- 9.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) Months after partial termination, expiry or termination to:
 - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
- 9.3 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 9.4 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

10. ASSETS, SUB-CONTRACTS AND SOFTWARE

- 10.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:
 - 10.1.1 terminate, enter into or vary any Sub-Contract;
 - 10.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
 - 10.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 10.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 8.1.5 of this Schedule, the Customer shall provide written notice to the Supplier setting out:

- 10.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
- 10.2.2 which, if any, of:
- (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,
the Customer and/or the Replacement Supplier requires the continued use of; and
- 10.2.3 which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "**Transferring Contracts**"),
in order for the Customer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or the Replacement Goods and/or Replacement Services.
- 10.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Charges at the Expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 10.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 10.5 Where the Supplier is notified in accordance with paragraph 10.2.2 of this Schedule that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 10.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 10.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 10.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other

assistance as the Customer reasonably requires to effect this novation or assignment.

10.7 The Customer shall:

10.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

10.7.2 once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

10.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.

10.9 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 10.6 of this Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

11. SUPPLIER PERSONNEL

11.1 The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 16 (Staff Transfer) shall apply.

11.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Supplier.

11.3 During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.

11.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

11.5 The Supplier shall not for a period of twelve (12) Months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier, unless approval has been obtained from the Customer which shall not be unreasonably withheld.

12. CHARGES

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

13. APPORTIONMENTS

- 13.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 13.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 13.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - 13.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 13.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 13.1 of this Schedule as soon as reasonably practicable.

ANNEX 1: DRAFT ETHICAL WALL AGREEMENT

[THE CUSTOMER]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) **[INSERT NAME OF CUSTOMER]** (the "**Customer**") [acting on behalf of the Crown] of [insert Customer's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

BACKGROUND

- (A) The Customer is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Customer is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- (C) The Customer has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Customer or of a procurement service provider acting on behalf of the Customer who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Customer is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Customer has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Customer under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

3 DEFINITIONS AND INTERPRETATION

3.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" 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;

"Agreement" means this ethical wall agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Customer under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for []] dated [] between the Customer and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Customer as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Customer has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Customer as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

“ITT Response” means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

“Other Affiliate” any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

“Parties” means the Customer and the Counterparty;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

“Purpose” has the meaning given to it in recital (B) to this Agreement;

“Representative” refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

“Third Party” means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 3.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 3.3 Reference to the disclosure of information, or provision of access, by or to the Customer or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Customer or Representatives of the Counterparty (as the case may be).
- 3.4 Reference to persons includes legal and natural persons.
- 3.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 3.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 3.7 Reference to any gender includes any other.
- 3.8 Reference to writing includes email.
- 3.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 3.10 The words “include” and “including” are to be construed without limitation.
- 3.11 The singular includes the plural and vice versa.
- 3.12 The headings contained in this Agreement shall not affect its construction or interpretation.

4 ETHICAL WALLS

4.1 In consideration of the sum of £1 payable by the Customer to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

- (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are 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 Counterparty or its Affiliates or Representatives and the duties owed to the Customer under the Contract or pursuant to an open and transparent ITT Process;
- (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Customer under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 4.2.

4.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Customer a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (ii) which would or could in the opinion of the Customer confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Customer and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Customer;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;

- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
 - (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
 - (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
 - (j) comply with any other action as the Customer, acting reasonably, may direct.
- 4.3 In addition to the obligations set out in Clause 4.1(a) and 4.1(c), the Counterparty shall:
- (a) notify the Customer immediately of all perceived, potential and/or actual conflicts of interest that arise;
 - (b) submit in writing to the Customer full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
 - (c) seek the Customer's approval thereto,
- which the Customer shall have the right to grant, grant conditionally or deny (if the Customer denies its approval the Counterparty shall repeat the process set out in clause 4.3 until such time as the Customer grants approval or the Counterparty withdraws from the ITT Process).
- 4.4 Any breach of Clause 4.1, Clause 4.2 or Clause 4.3 shall entitle the Customer to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Customer may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Customer there has been a breach of Clause 4.1, Clause 4.2 or Clause 4.3.
- 4.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 4.1 and 4.2 as reasonably requested by the Customer.
- 4.6 The Customer reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 4.1(c) and 4.2.
- 4.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 4.5 and 4.6, does not constitute acceptance by the Customer of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 4.8 The actions of the Customer pursuant to Clause 4.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 4.9 In no event shall the Customer be liable for any bid costs incurred by:

- (a) the Counterparty or any Affiliate or Representative; or
- (b) any Other Bidder, Other Affiliate or Other Representative,

as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

4.10 The Counterparty acknowledges and agrees that:

- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 4; and
- (b) in the event of such breach by the Counterparty of any of its obligations in clause 4 which cannot be effectively remedied the Customer shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

5 SOLE RESPONSIBILITY

5.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Customer of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Customer shall discharge the Counterparty's obligations.

6 WAIVER AND INVALIDITY

- 6.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 6.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

7 ASSIGNMENT AND NOVATION

- 7.1 Subject to clause 7.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Customer.
- 7.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
 - (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Customer; and
 - (c) the Counterparty shall, at the Customer's request, enter into a novation agreement in such form as the Customer may reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 7.

- 7.3 A change in the legal status of the Customer such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Customer.

8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 8.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

9 TRANSPARENCY

- 9.1 The parties acknowledge and agree that the Customer is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Customer may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

10 NOTICES

- 10.1 Any notices sent under this Agreement must be in writing.
- 10.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

	the next Working Day (if after 5.00pm).	
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- 10.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Agreement:

	Counterparty	Customer
Contact		
Address		
Email		

- 10.4 This Clause 10 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

11 WAIVER AND CUMULATIVE REMEDIES

- 11.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 11.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

12 TERM

- 12.1 Each party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date.

13 GOVERNING LAW AND JURISDICTION

- 13.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

- 13.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Customer

Name:

Signature:

Position in Customer:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

SCHEDULE 12 - DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this **Schedule 12**, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2 of this Schedule;
"Exception"	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Agreement or in the supply of the Services;
"Expert"	the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule 12 ;
"Mediation Notice"	has the meaning given to it in paragraph 3.2 of this Schedule; and
"Mediator"	the independent third party appointed in accordance with paragraph 4.2 of this Schedule 12 .

2. INTRODUCTION

2.1 If a Dispute arises then:

2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this **Schedule 12**, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the

Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.2 of this **Schedule 12**, the Parties shall seek to resolve Disputes:

2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this **Schedule 12**);

2.4.2 then by mediation (as prescribed in paragraph 4 of this **Schedule 12**); and

2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule) or litigation (in accordance with **Clause 56** of this Agreement (Governing Law and Jurisdiction)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Schedule) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Schedule.

2.6 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.

2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Agreement then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:

2.7.1 in paragraph 3.2.3, ten (10) Working Days;

2.7.2 in paragraph 4.2, ten (10) Working Days;

2.7.3 in paragraph 5.2, five (5) Working Days; and

2.7.4 in paragraph 6.2, ten (10) Working Days.

2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer's and the Supplier's Representatives as set out below:

Party	Name	Contact Details
Customer	[INSERT name]	[INSERT contact details]

Supplier	Christian Cockroft	cc@elocker.com
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3.2 If:

- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Schedule; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 4 of this Schedule.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Agreement .
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person

appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

5.3 The Expert shall act on the following basis:

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

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Schedule or be subject to the jurisdiction of the courts in accordance with **Clause 56 (Governing Law and Jurisdiction)** of this Agreement. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
 - 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with **Clause 61** of this Agreement (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule, the Supplier may either commence arbitration proceedings in accordance

with paragraph 6.4 of this Schedule or commence court proceedings in the courts in accordance with **Clause 56** of this Agreement (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule, the Parties hereby confirm that:

6.4.1 all disputes, issues or claims arising out of or in connection with this Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 6.4.5 to 6.4.7 of this Schedule);

6.4.2 the arbitration shall be administered by the LCIA;

6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

6.4.5 the chair of the arbitral tribunal shall be British;

6.4.6 the arbitration proceedings shall take place in London, or otherwise agreed by the Parties, and in the English language; and

6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

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

7.1.1 for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

7.1.2 where compliance with paragraph 2.1 of this Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

SCHEDULE 13 - VARIATION PROCEDURE

1. SCOPE OF SCHEDULE

- 1.1 This **Schedule 13** sets out in Appendix 2 the Variation Form to be used if either Party requests a variation to the Agreement.
- 1.2 The Supplier shall not act on instructions given by a Customer Representative in respect of Variations unless the Customer Representative is acting within the limits of their contractual and financial delegation authority specified in Appendix 1 to this **Schedule 13**. For the avoidance of doubt, a Variation Form will not be validly authorised on behalf of the Customer and the Supplier shall not implement any proposed Variation until the Variation Form is signed and executed on behalf of the Customer by both Customer Representatives responsible for signing Variation Form(s) (acting within the limits of their financial delegation authority or contractual delegation authority as set out in to Appendix 1 of this **Schedule 13**).
- 1.3 The Customer may, by written notice to the Supplier, revoke or amend the authority of any of its representatives or appoint a new representative.

Appendix 1

CUSTOMER REPRESENTATIVES

NAME	ROLE TITLES	• RESPONSIBILITIES	FINANCIAL AUTHORITY	CONTRACTU AL AUTHORITY
[]	Customer Representative	[]		

Appendix 2

VARIATION FORM

Variation Form No:

.....

BETWEEN:

[INSERT name of Customer] ("the Customer")

and

eLocker Limited("the Supplier")

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

[Guidance Note: Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in this Agreement.
3. This Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Name:_____	Name:_____
Position:_____	Position:_____
Date:_____	Date:_____
SIGNED ON BEHALF OF THE CUSTOMER:	
Signature:_____	
Name:_____	
Position:_____	
Date:_____	

SCHEDULE 14 - DEED OF GUARANTEE

[REDACTED]

- and -

eLocker Limited

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert date of execution] (the "**Deed**")

BETWEEN:

- (3) **M&JH Holdings** a company incorporated in England and Wales under registered number 10069215 whose registered office is at 9/10 The Crescent, Wisbech, Cambridgeshire, United Kingdom, PE13 1EH (the "**Guarantor**"); and
- (4) National Highways whose principal office is at [] (the "**Beneficiary**").

together the "**Parties**" and each a "**Party**".

BACKGROUND:

- (F) The Beneficiary [has awarded] a contract dated [insert date] to [insert details of the Supplier] (the "**Supplier**") for the provision of [insert details of goods or services to be provided] (the "**Guaranteed Agreement**").
- (G) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Beneficiary of a parent company guarantee substantially in the form of this Deed.
- (H) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 The **following** definitions apply in this Deed:

- | | |
|-----------------------|---|
| "Business Day" | means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business; |
| "Control" | means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person: <ul style="list-style-type: none">(a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or(b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate; |

"Guaranteed Agreement"	has the meaning given to it in Recital (F);
"Guaranteed Obligations"	has the meaning given to it in Clause 2.1(a);
"Supplier"	has the meaning given to it in Recital (F);
"VAT"	means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

- (a) the "Guarantor", the "Beneficiary", the "Supplier" or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- (b) "assets" includes present and future properties, revenues and rights of every description;
- (c) this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (e) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (f) the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- (g) a time of day is a reference to London time.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor:

- (a) guarantees to the Beneficiary the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the **"Guaranteed Obligations"**);

- (b) shall pay to the Beneficiary from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
 - (c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Beneficiary, immediately on demand perform or procure performance of the same at the Guarantor's own expense.
- 2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Beneficiary in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Beneficiary arising out of, or in connection with:
 - (a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
 - (b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,
 - (c) provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

3 BENEFICIARY PROTECTIONS

Continuing Guarantee

- 3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Beneficiary may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

- 3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:
 - (a) any arrangement made between the Supplier and the Beneficiary;
 - (b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
 - (c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;

- (d) any waiver or forbearance by the Beneficiary whether as to payment, time, performance or otherwise;
- (e) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
- (f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;
- (g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

- 3.3 The Guarantor waives any right it may have to require the Beneficiary to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

- 3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:
- (a) be subrogated to any right or security of the Beneficiary;
 - (b) claim or prove in competition with the Beneficiary against the Supplier or any other person;
 - (c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
 - (d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
 - (e) claim any right of contribution, set-off or indemnity from the Supplier,
- without the prior written consent of the Beneficiary (and in such case only in accordance with any written instructions of the Beneficiary).
- 3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Beneficiary given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Beneficiary applied towards the discharge of the Guarantor's obligations to the Beneficiary under this Deed.

4 VARIATION OF THE GUARANTEED AGREEMENT

- 4.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

5 PAYMENT AND COSTS

- 5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Beneficiary in pounds sterling:
- (a) without any set-off, condition or counterclaim whatsoever; and
 - (b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.
- 5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:
- (a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
 - (b) the Guarantor shall promptly deliver to the Beneficiary all receipts issued to it evidencing each deduction or withholding which it has made.
- 5.3 The Guarantor shall not and may not direct the application by the Beneficiary of any sums received by the Beneficiary from the Guarantor under any of the terms in this Deed.
- 5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 5.5 The Guarantor shall, on a full indemnity basis, pay to the Beneficiary on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Beneficiary incurs in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and
 - (b) any discharge or release of this Deed.

6 CONDITIONAL DISCHARGE

- 6.1 Any release, discharge or settlement between the Guarantor and the Beneficiary in relation to this Deed shall be conditional on no right, security,

disposition or payment to the Beneficiary by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.

- 6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Beneficiary shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

7 REPRESENTATIONS AND WARRANTIES

- 7.1 The Guarantor represents and warrants to the Beneficiary that:

- (a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
- (c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
- (d) it has been duly authorised to enter into this Deed;
- (e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
- (f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- (h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- (i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

8 ASSIGNMENT

- 8.1 The Beneficiary shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the

Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.

- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Beneficiary.

9 VARIATION

- 9.1 No variation of this Deed shall be effective unless it is in writing and signed by the parties.

10 DEMANDS AND NOTICES

- 10.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed shall be in writing, addressed to:
- (a) For the Attention of [insert details]
 - (b) [Address of the Guarantor in England and Wales]
- 10.2 or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.
- 10.3 Any notice or demand served on the Guarantor or the Beneficiary under this Deed shall be deemed to have been served:
- (a) if delivered by hand, at the time of delivery; or
 - (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.
- 10.4 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
- 10.5 Any notice purported to be served on the Beneficiary under this Deed shall only be valid when received in writing by the Beneficiary.

11 ENTIRE AGREEMENT

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

12 WAIVER

- 12.1 No failure or delay by the Beneficiary to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.2 Any waiver by the Beneficiary of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

13 SEVERANCE

- 13.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

14 THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

15 GOVERNING LAW AND JURISDICTION

- 15.1 This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.
- 15.3 Nothing contained in Clause 15.2 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor irrevocably appoints [Insert name of agent] of [Insert address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Beneficiary has received prior written notice that such agent has ceased to act as agent.

If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address within England and Wales.]

Executed as a deed by [insert the name of the Guarantor] acting by [insert name of Director] a director, in the presence of a witness:

.....
[Signature of Witness]

.....
[Signature of Director]

Name of Director:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

SCHEDULE 15 - DATA PROCESSING

16 Processing Personal Data

- 16.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Customer at its absolute discretion.
- 16.2 The contact details of the Customer's Data Protection Officer are: **Name: Graham Woodhouse Email: DataProtectionAdvice@highwaysengland.co.uk**
- 16.3 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
- 16.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 16.5 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Customer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 32.7.2 to 32.7.14 and for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> Name, Email, Pin Code, Card ID, Locker Usage Data <p>The Supplier is Controller and the Customer is Processor</p> <p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Customer is the Processor in accordance with Clause 32.7.2 to 32.7.14 of the following Personal Data:</i></p> <ul style="list-style-type: none"> Locker Usage Data <p>The Parties are Joint Controllers</p> <p><i>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"> No Relevant Data <p>The Parties are Independent Controllers of Personal Data</p>

	<p><i>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"> • <i>Business contact details of Supplier Personnel,</i> • <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of the Customer (excluding the Supplier Personnel) engaged in the performance of the Customer's duties under this Agreement).</i>
Duration of the processing	Processing will be for the duration of the contract (1st June 2022 - 1st June 2027)
Nature and purposes of the processing	The Processor shall Process User's Data on behalf of the User as User's Processor. The scope, extent, and nature of the Processing are the sole purpose of facilitation of the provision of the Services by the Processor to the User. The Processor shall ensure that any of its officers, directors, employees, consultants, representatives and other natural persons that participate in the Processing of User's Data agree to the same restrictions and conditions as those listed in this Agreement. The Processor shall Process User's Data only to the extent required and with the purpose of fulfilling Processor's obligations under the Terms, to the extent necessary for the provision of the Services, and in accordance with User's Instructions.
Type of Personal Data	Name, Email, Pin Code, Card ID, Locker Usage Data
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers), Users of eLocker Manager (app.elocker.com) and Personnel requiring access to devices stored in the lockers.
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Name, Email, Pin Code, Card ID – this data relating to a person or user will be retained until they are deleted or removed from the application by The Customer or deleted at the end of the contract after the provision of Services has ended.</p> <p>Locker Usage Data – is retained for a maximum of 90 days and removed or deleted with the personal record mentioned above.</p>

SCHEDULE 16 - STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Admission Agreement”	The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
“Former Supplier”	a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules

adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

“Service Transfer”

any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

“Service Transfer Date”

the date of a Service Transfer;

“Staffing Information”

in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant

standard contracts if applied generally in respect of such employees); and

- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Supplier's Final Supplier Personnel List”

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

“Supplier's Provisional Supplier Personnel List”

a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

“Transferring Customer Employees”

those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Supplier Employees”

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

“Transferring Supplier Employees”

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

2. INTERPRETATION

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

PART A

TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

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

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

2. CUSTOMER INDEMNITIES

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

- 2.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
- 2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - 2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
 - 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
 - 2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Customer considers

appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer within 6 months of the Commencement Date.

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

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where

applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and

- 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.2.4 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. PENSIONS

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

ANNEX TO PART A

PENSIONS

1. PARTICIPATION

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Customer:

- 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- 1.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
- 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
- 1.2.4 agree that the Customer may terminate this Agreement for material default in the event that the Supplier breaches the Admission Agreement.

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

2. FUTURE SERVICE BENEFITS

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

2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

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

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

4. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be

unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT THE COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

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

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

2. FORMER SUPPLIER INDEMNITIES

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

2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

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

- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
 - 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take

such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

55.3 the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Commencement Date.

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

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former

Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and

- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.1.4 the New Fair Deal.

- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. PROCUREMENT OBLIGATIONS

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

7. PENSIONS

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

ANNEX TO PART B

PENSIONS

1. PARTICIPATION

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Customer:

- 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- 1.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
- 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
- 1.2.4 agree that the Customer may terminate this Agreement for material default in the event that the Supplier breaches the Admission Agreement.

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

2. FUTURE SERVICE BENEFITS

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

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

2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

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

4. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

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

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

8. PROCEDURE IN THE EVENT OF TRANSFER

- 8.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 8.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 8.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
 - 8.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 8.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 8.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
- 8.4.1 no such offer of employment has been made;
 - 8.4.2 such offer has been made but not accepted; or
 - 8.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

9. INDEMNITIES

- 9.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Customer shall:
- 9.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

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

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

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

9.4 The indemnities in Paragraph 2.1:

9.4.1 shall not apply to:

- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- (c) shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within 6 months of the Commencement Date.

10. PROCUREMENT OBLIGATIONS

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

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

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

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

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

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

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

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

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

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

- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

- 1.5.4 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 Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

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

- 1.6.1 the numbers of employees engaged in providing the Services;
- 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
- 1.6.3 a description of the nature of the work undertaken by each employee by location.

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

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part

of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

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

(a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

- (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 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 Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it

considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge,

all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1 the Supplier and/or any Sub-contractor; and

2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;

2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
- (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

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

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

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SCHEDULE 17 - CONTINUOUS IMPROVEMENT

2. SUPPLIER'S OBLIGATIONS

- 2.1 The Supplier must, throughout the Term, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Customer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Customer.
- 2.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Customer of the Deliverables and the way it provides them, with a view to reducing the Customer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Customer must provide each other with any information relevant to meeting this objective.
- 2.3 In addition to Paragraph 2.1, the Supplier shall produce at the start of each Agreement Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Agreement) during that Agreement Year ("**Continuous Improvement Plan**") for the Customer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 2.3.1 identifying the emergence of relevant new and evolving technologies;
 - 2.3.2 changes in business processes of the Supplier or the Customer and ways of working that would provide cost savings and/or enhanced benefits to the Customer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 2.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
 - 2.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Customer in meeting their sustainability objectives.
- 2.4 The initial Continuous Improvement Plan for the first Agreement Year shall be submitted by the Supplier to the Customer for Approval within six (6) Months following the Commencement Date.
- 2.5 The Customer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once

Approved, it becomes the Continuous Improvement Plan for the purposes of this Agreement.

- 2.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.7 If the Customer wishes to incorporate any improvement into this Agreement, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Customer.
- 2.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
 - 2.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 2.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Agreement Year (after the first Agreement Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.

SCHEDULE 18 - CONTRACT MANAGEMENT

1. DEFINITIONS

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Operational Board"	the board established in accordance with Paragraph 4.1 of this Schedule;
"Project Manager"	the manager appointed in accordance with Paragraph 2.1 of this Schedule;

2. PROJECT MANAGEMENT

- 2.1 The Supplier and the Customer shall each appoint a Project Manager for the purposes of this Agreement through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.
- 2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

3. ROLE OF THE SUPPLIER PROJECT MANAGER

- 3.1 The Supplier Project Manager shall be:
 - 3.1.1 the primary point of contact to receive communication from the Customer and will also be the person primarily responsible for providing information to the Customer;
 - 3.1.2 able to delegate their position to another person at the Supplier but must inform the Customer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
 - 3.1.3 able to cancel any delegation and recommence the position himself; and
 - 3.1.4 replaced only after the Customer has received notification of the proposed change.
- 3.2 The Customer may provide revised instructions to the Supplier's Project Manager regarding the Agreement and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Customer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Agreement.

4. ROLE OF THE OPERATIONAL BOARD

- 4.1 The Operational Board shall be established by the Customer for the purposes of this Agreement on which the Supplier and the Customer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Customer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in their place (wherever possible) and that the delegate is properly briefed and prepared and that they are debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Agreement. The agenda for each meeting shall be set by the Customer and communicated to the Supplier in advance of that meeting.

5. CONTRACT RISK MANAGEMENT

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Customer, processes for:
 - 5.2.1 the identification and management of risks;
 - 5.2.2 the identification and management of issues; and
 - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Customer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Agreement which the Customer and the Supplier have identified.

Annex: Operational Boards

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

Operation Board	Frequency	Attendees	Location	Planned start date
Inaugural meeting	One off	Customer Project Manager Supplier Project Manager Customer project team members, as required Supplier project team members as required	Office location or venue determined by customer project manager Note: This may revert to Virtual teleconference or a hybrid of virtual teleconference and face to face, Covid lockdown restrictions permitting	Commencement Date + 1 week
Service Review	Monthly	Customer Project Manager Supplier Project Manager Customer project team members, as required Supplier project team members as required	Office location or venue determined by customer project manager Note: This may revert to Virtual teleconference or a hybrid of virtual teleconference and face to face, Covid lockdown restrictions permitting	Commencement Date + 1 month
Project Group	Weekly	Customer Project Manager Supplier Project Manager Customer project team members, as required Supplier project team members, as required	Virtual teleconference. Note: This may revert to the Customer office location, Covid lockdown restrictions permitting.	Commencement Date + 1 week
Project Board	Monthly	Customer Senior Responsible Owner (SRO) for project	Virtual teleconference. Note: This may revert to the Customer office	Commencement Date + 1 month

		Customer senior users Customer IT Directorate Customer contract management Customer Project Manager Customer project support Supplier Project Manager Supplier project team members, as required	location, Covid lockdown restrictions permitting.	
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GENERAL MANAGEMENT

Req No:	Requirement	Notes
A	The supplier will provide a 'named' Contract Manager	
B	The supplier will produce and monthly maintain a Communication & Stakeholder Management Plan	
C	The supplier will produce and monthly maintain a Help Desk Register of Open & Closed service requests and faults	
D	The supplier will produce and maintain a Business Continuity Plan	This document to be produced within three months of contract commencement and reviewed six-monthly thereafter
E	The supplier will produce and maintain a contract Risk & Issues Register	This document to be produced within three months of contract commencement and reviewed six-monthly thereafter
F	As part of the onboarding process, the supplier will produce an Exit Plan, which describes how services will be handed over in the event of a change to a new supplier.	This document to be produced within three months of contract commencement and reviewed annually thereafter
G	The supplier will produce and monthly maintain a National Highways compliant Health & Safety Plan	

H	The supplier will produce and monthly maintain a Financial Forecast Register	
I	The supplier must comply with HE contract / supplier monitoring processes e.g. The Collaborative Performance Framework (CPF) process, H&S reporting. CPF assessment will be at the frequency as advised by the National Highways Contract Manager.	
J	Commitment to operate the contract in-line with National Highways "Home Safe & Well" and "Driving for better business" approach.	See Standards - Health, Safety & Wellbeing Policy 2020 – 2021 & https://www.drivingforbetterbusiness.com/
K	The supplier will produce and maintain and monthly Asset Register	
L	The supplier will attend monthly Service Review Meetings with the National Highways Contract Manager at a mutually agreed venue	See Schedule 6 (Part B)

SCHEDULE 19 - INSURANCE REQUIREMENTS

1. Insurance

- 1.1 Without prejudice to its obligations to the Customer under this Agreement including its indemnity and liability obligations, the Supplier shall, for the periods specified in this Schedule, take out and maintain or procure the taking out and maintenance of the insurances as set out in this Schedule, any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that the Insurances are effective in each case not later than the date upon which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (as far as is reasonably practicable) on terms no less favourable to those generally available to a prudent Supplier in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are (in the opinion of the Customer Representative) of good financial standing, appropriately regulated and of good repute in the international insurance market.
- 1.4 The Insurances referred to in **paragraph 1** shall:
 - 1.4.1 in respect of the public and products liability policy, contain an indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable; and
 - 1.4.2 be maintained from the date referred to in **paragraph 1** and for such further period as may be specified in this Schedule subject to the terms, cover features and extensions and principal exclusions as specified in this Schedule, as applicable.
- 1.5 Without limiting the other provisions of this Agreement the Supplier shall:
 - 1.5.1 take, or procure the taking of, reasonable risk management and risk control measures in relation to the Deliverables as it would be reasonable to expect of a Supplier acting in accordance with Good Industry Practice including the investigation and reports of claims to insurers; and
 - 1.5.2 promptly notify the insurers of any material fact under the Insurances of which the Supplier is or becomes aware. The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

- 1.6 The Customer may elect (but shall not be obliged) after written notice has been provided by the Customer Representative to the Supplier to purchase any Insurance which the Supplier is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Customer shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.
- 1.7 On request from the Customer Representative, the Supplier shall, not more than fifteen (15) Working Days after the Call-Off Effective Date, and within fifteen (15) Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Customer Representative, that the Insurances are in full force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Customer Representative shall not itself constitute acceptance by the Customer Representative or relieve the Supplier of any of its liabilities and obligations under this Agreement.
- 1.8 The Customer Representative may from time to time submit a request in writing to the Supplier, requesting evidence, in a form satisfactory to the Customer Representative, of the existence of all Insurances, and in respect of the Insurances evidence of the timely payment of premiums and the Supplier shall provide all such evidence within fifteen (15) Working Days of such written request.
- 1.9 The Supplier shall hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it or the Customer is a part and for which it is responsible under this Agreement.
- 1.10 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":
- 1.10.1 if and to the extent that the level of cover available falls below that minimum because a claim or claims which do not relate to the Agreement are paid by insurer(s), the Supplier shall ensure that the cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to the Agreement; and
- 1.10.2 if the Supplier is or has reason to believe that it will be unable to ensure that cover is reinstated to maintain at all times the minimum limit of indemnity specified it shall submit to the Customer immediately full details of the policy concerned and shall submit forthwith its proposed solution for maintaining the minimum limit of indemnity specified.
- 1.11 Without prejudice to the other provisions of this Schedule, as appropriate the Supplier shall notify the Customer Representative twenty (20) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances. The obligation under this Schedule shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer

in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

- 1.12 The Supplier shall promptly notify the insurers of any matter arising from or in relation to the Deliverables or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Customer receives a claim relating to the Deliverables or this Agreement except where the Customer is the claimant party, the Supplier shall cooperate with the Customer Representative and assist it in dealing with such claims including providing information and documentation in a timely manner.
- 1.13 The Supplier shall (except where the Customer is the claimant party) give the Customer Representative notification within twenty (20) Working Days after being notified of any claim on any of the Insurances, or which, but for the application of the applicable policy excess, would be made on any of the Insurances, relating to the provision of the Deliverables or performance of its obligations under this Agreement.
- 1.14 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Customer to review such register at any time.
- 1.15 Where any Insurance referred to in this Schedule requires payment of a premium, the Supplier shall be liable for and shall pay such premium.
- 1.16 Where any Insurance referred to in this Schedule is subject to an excess or deductible below which the indemnity from insurers is excluded the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Customer any sum paid by way of excess or deductible under the Insurances under the terms of this Agreement.

ANNEX 1

REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1. **Insured**

The Supplier.

2. **Interest**

To indemnify the Insured (as specified in paragraph 1 above) in respect of all sums which the Insured (as specified in paragraph 1 above) shall become legally liable to pay as damages, whether contractually or otherwise, including claimant's costs and expenses, in respect of accidental:

- (a) death or bodily injury to or sickness, loss of sight, anguish or shock whether mental or otherwise, or illness or disease contracted by any person;
- (b) loss of or damage to property;

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

3. **Limit of indemnity**

Not less than three million pounds (£3,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but three million pounds (£3,000,000) in respect of any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

4. **Territorial limits**

United Kingdom

5. **Period of insurance**

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

6. **Cover features and extensions**

- 6.1 Indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable;

7. **Principal exclusions**

- 7.1 War and related perils;
- 7.2 Nuclear and radioactive risks;
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured (as specified in paragraph 1 above) arising out of and during the course of their employment;
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable law in respect of such vehicles;

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured (as specified in paragraph 1 above);
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property;
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel;
- 7.8 Liability arising from contamination and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence;
- 7.9 Liability in respect of loss, damage or destruction to physical property in the care, custody and control of the Insured (as specified in paragraph 1 above) but this exclusion is not to apply to Customer physical property in the care, custody and control of the Supplier.
- 8. **Maximum deductible threshold**
Not to exceed £250 for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

- 1. **Insured**
The Supplier.
- 2. **Interest**
To indemnify the Insured (as specified in paragraph 1 above) for all sums which the Insured (as specified in paragraph 1 above) shall become legally liable to pay (including claimant's costs and expenses) as a result of claims first made against the Insured (as specified in paragraph 1 above) during the Period of Insurance (as specified in paragraph 5 below) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the advice and / or professional services and in connection with this Agreement.
- 3. **Limit of indemnity**
Not less than one million pounds (£1,000,000) in respect of any one claim and in the aggregate per annum.
- 4. **Territorial limits**
United Kingdom
- 5. **Period of insurance**
From the date of this Agreement and renewable on an annual basis unless agreed otherwise by the Customer in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of six (6) years after the Expiry Date.
- 6. **Cover features and extensions**
 - 6.1 Retroactive cover to apply to any claims made policy wording in respect of this Agreement or retroactive date to be no later than the Commencement Date.
- 7. **Principal exclusions**
 - 7.1 War and related perils.

7.2 Nuclear and radioactive risks.

8. **Maximum deductible threshold**

Not to exceed £2500 for each and every claim.

PART C: EMPLOYERS' LIABILITY INSURANCE

1. The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom Employers' Liability Insurance.
2. Employers' Liability Insurance to a minimum of five million pounds (£5,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.
3. It is a legal requirement that all companies hold Employer's Liability Insurance of five million pounds (£5,000,000) in respect of any one occurrence the number of occurrences being unlimited in any annual policy period as a minimum.