

Agreement
relating to the service and maintenance of fixed and mobile RN detection
equipment

Schedule 1 (Definitions)

SCHEDULE 1

DEFINITIONS

In accordance with Clause 1.1 (Definitions and Interpretation), in this Agreement including its recitals the following expressions shall have the following meanings:

"Acceptable Bank" means a bank or financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised rating agency;

"Acceptance into Service" or "AIS" means the point at which Services meet their functionality and quality requirements and that the Supplier is ready to operate the new Service when it has been deployed;

"Acceptance into Service Criteria" or "AIS Criteria" means a set of criteria used to ensure that the Services meet their functionality and quality requirements and that the Supplier is ready to operate the new Service when it has been deployed;

"Access Management" has the meaning set out in ITIL v3 (2011);

"Achieve" means:

(a) in respect of a Service Acceptance Test, to successfully pass such test without any issues; and

(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (*Testing*),

and **"Achieved"** and **"Achievement"** shall be construed accordingly;

"Achieved SLA Delta" means, in relation to the calculation of the Service Credits for Service Level 11 (Availability), the difference between the maximum availability at a Charging Location (100%) and the Site Service Availability achieved at the relevant Charging Location, calculated in accordance with the following formula:

$$\text{ASLAD} = 100\% - \text{SSLA}$$

Where:

ASLAD = Achieved SLA Delta; and

SSLA = the Site Service Availability for the relevant Charging Location for the relevant Month;

"Acquired Rights Directive" means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to

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the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

“Actual Costs”

means, at a Profit Share Assessment Point, the total accumulated costs of the supplier on an accruals basis in the corresponding Profit Share Period in relation to this Agreement, as stated in the supporting Outturn Financial Model. Actual Costs does not include:

- (a) any amount in respect of taxation;
- (b) any Profit Share amounts paid by the Supplier;
- (c) any amounts relating to Pass-Through Expenses and Assets;
- (d) any Service Credits;
- (e) any write-downs of goodwill or of the value of any asset carried at a valuation in the relevant Profit Share Period; and
- (f) any cost types not included in the AET Baseline Financial Model;

“Actual Profit”

means, in relation to any Profit Share Assessment Point, the total accumulated operating profit being Actual Revenue (Contract Charges invoiced or due to be invoiced) less Actual Costs (including accruals and prepayments but excluding provisions) incurred by the Supplier in the corresponding Profit Share Period as stated in the corresponding Outturn Financial Model in respect of the Profit Share Period;

“Actual Revenue”

means, at a Profit Share Assessment Point, the Total Accumulated Turnover of the Supplier on an accruals basis in the corresponding Profit Share Period in relation to this Agreement, as stated in the supporting Outturn Financial Model;

“Admission Agreement”

means a standard form admission agreement under the Local Government Pension Scheme Regulations 2013;

“Adverse Financial Event”

means any event that occurs at any time during the Term which will or is reasonably likely to trigger an adverse change in the risk level arising for either the Supplier, a Key Sub-contractor, the Group or the Guarantor including those set out in Annex 1 of Schedule 7.2 (Financial Distress);

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“AET Baseline Financial Model”	means the financial model provided by the Supplier as part of its Tender as updated from time to time in accordance with the provisions of Schedule 7.4 (Financial Model);
“AFE Continuity Plan”	has the meaning given to it in paragraph 2.4.3(b) of Schedule 7.2 (Financial Distress);
“AFE Notice”	has the meaning given to it in paragraph 1.4(b) of Schedule 7.2 (Financial Distress);
“AFE Notice Trigger”	has the meaning given to it in paragraph 1.4(b) of Schedule 7.2 (Financial Distress);
“Affected Party”	means the party seeking to claim relief in respect of a Force Majeure;
“Affected Site Lanes”	has the meaning given to it in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Level Performance Measure” in the row for Service Level 11 (Availability);
"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 agreement, which includes its schedules, annexes and attachments, relating to the service and maintenance of fixed and mobile RN detection equipment;
“Anticipated Contract Life Profit Margin”	means the anticipated Supplier Profit Margin over the Initial Term as reflected in the Financial Model and in accordance with the following formula:

$$ACLPM = (TCR - TCC) / TCR$$

Where:

*ACLPM = the Anticipated Contract Life Profit Margin;
TCR = the total revenues estimated over the duration of the Initial Term as set out in the AET Baseline Financial Model;
and
TCC = the total costs estimated over the duration of the Initial Term as set out in the AET Baseline Financial Model;*

“Applicable Supplier Personnel”	means any Supplier Personnel who: <ul style="list-style-type: none"> (g) at the Termination Date: <ul style="list-style-type: none"> (i) are employees of the Supplier; (ii) are Dedicated Supplier Personnel; and
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- (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
- (h) are dismissed or given notice of dismissal by the Supplier within:
 - (i) 40 Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (i) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
- (j) the Supplier can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers; and
 - (ii) are genuinely being dismissed for reasons of redundancy; and
- (k) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

"Approval" means the prior written consent of the Authority and **"Approve"** and **"Approved"** shall be construed accordingly;

"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 Authority;

"Assets" means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the

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Authority Assets;

“Asset Management”

has the meaning set out in ITIL v3 (2011);

“Audit”

means any exercise by the Authority of its audit rights pursuant to Clause 44 (Records, Audit Access and Open Book Accounting);

“Audit Agents”

means:

- (a) the Authority’s internal and external auditors;
- (b) the Authority’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

"Auditor"

means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;

“Authorisation to Operate” or “ATO”

means a formal declaration by the Authority that authorizes operation of Services and explicitly accepts the risk to agency operations;

“Authority Assets”

means any IT hardware, network or infrastructure supplied or to be supplied or made available to the Supplier by the Authority to assist the Supplier in carrying out its obligations under this Agreement;

“Authority Background IPRs”

means:

- (g) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s know-how, documentation, processes and procedures;
- (h) IPRs created by a Authority independently of this Agreement; and/or
- (i) Crown Copyright which is not available to the Supplier otherwise than under this Agreement,

but excluding IPRs owned by the Authority subsisting in the Authority Software;

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“Authority Business Hours”	means the hours during which the Authority operates its ordinary business;
“Authority Business Representative (CNO)”	means the person representing the Authority identified in the table at paragraph 5 of Annex 1 of Schedule 8.5 (Governance and Contract Management);
“Authority Cause”	<p>means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:</p> <ul style="list-style-type: none">(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
"Authority Confidential Information"	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
“Authority Data”	<p>means</p> <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, and which are:<ul style="list-style-type: none">(i) supplied to the Supplier by or on behalf of the Authority; and/or(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or(b) any Personal Data for which the Authority is the Data Controller;
“Authority ICT”	means any Authority Information and Communications Technology components of the service;
“Authority Premises”	means any premises that the Authority has control over;
"Authority Representative"	means a representative appointed by the Authority from time to time responsible for the day to day management of this Agreement;

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“Authority Requirements”	means the requirements set out in Schedule 2.1 (Services Description), Schedule 2.2 (Performance), Schedule 2.3 (Standards), Schedule 2.4 (Security Management) and Schedule 2.5 (Insurance Requirements);
“Authority Security Representative”	means the person appointed by the Authority under paragraph 1.2 of Schedule 2.4 (Security Management) with overall responsibility for security under this Agreement;
“Authority Responsibilities”	means the responsibilities of the Authority specified in Schedule 3 (Authority Responsibilities);
“Authority Software”	means software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Goods and/or Services;
"Authority System"	means any Authority's computing environment (consisting of hardware, software or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Goods and Services;
“Authority Test Report”	has the meaning given to it in paragraph 9.6(b) of Schedule 6.2 (Testing Procedures);
“Authority to Proceed” or “ATP”	means the criteria for completing each Milestone and to proceed to the next Milestone or, in the case of Milestone 4, proceed to Service Go-Live, as detailed in the fourth column of the table at Annex 1 to Schedule 6.1 (Implementation Plan);
“Authority's Commercial Manager”	means the person representing the Authority identified in the table at paragraph 5 of Annex 1 of Schedule 8.5 (Governance and Contract Management);
“Authority's Default”	means any breach of the obligations of the Authority (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Authority in connection with or in relation to the subject-matter of this Agreement and in respect of which the Authority is liable to the Supplier;
“Availability”	has the meaning set out in ITIL v3 (2011);
“Availability Credit Cap”	means the maximum value of Availability Service Credits that can accrue to the Supplier in any rolling period of 12 Months;
“Availability Management”	has the meaning set out in ITIL v3 (2011);

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“Availability Service Credits”	means Service Credits that Accrue in relation to Service Level Failures of Service Level 10 (Availability);
“Baseline Security Requirement”	means the Authority’s baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (Security Management), as updated from time to time by the Authority and notified to the Supplier;
“BCDR”	means business continuity and disaster recovery;
"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in Schedule 8.4 (Business Continuity and Disaster Recovery);
“Benchmark Review”	means a review of one or more of the Services carried out in accordance with Paragraph 5 of Schedule 7.3 to determine whether those Services represent Good Value;
“Benchmarked Service”	means a Service that the Authority has elected to include in a Benchmark Review under Paragraph 5.1.1 of Schedule 7.3 (Value for Money and Benchmarking);
“Benchmarker”	means the entity appointed by the Parties to carry out the benchmark review and benchmark report from the list of organisations set out in Appendix 1 of Schedule 7.3 (Value for Money and Benchmarking);
“Benchmarker’s Report”	has the meaning given to it in Paragraph 5.5.1 of Schedule 7.3 (Value for Money and Benchmarking);
“Benchmarking”	means the process of carrying out a Benchmark Review in accordance with Paragraph 5 of Schedule 7.3 (Value for Money and Benchmarking);
"Branding Guidance"	means the Authority's guidance on branding as provided by the Authority to the Supplier from time to time;
“Breach Factor”	<p>means, in relation to each Incident Priority Level, the variable used to calculate Incident Service Credits for each Failed Incident, calculated in accordance with the following formula:</p> $BF = ID / SLAD$ <p>Where:</p> <p>BF = Breach Factor;</p> <p>ID = the Incident Duration of the relevant Failed Incident; and</p> <p>SLAD = the Service Level Target Duration for the relevant Incident Priority Level;</p>
“Breach of Security”	<p>means the occurrence of:</p> <p>(a) any unauthorised access to or use of the Services, the</p>

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Authority Premises, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any ICT, information or data (including any classified and protectively marked information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or

- (b) the loss and/or unauthorised disclosure of any information or data (including any classified and protectively marked information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement,

in either case as more particularly set out in the security requirements in Schedule 2.1 (Services Description) and the Baseline Security Requirements;

“Breakage Costs Payment”

means an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 2 of Schedule 7.5 (Payments on Termination)

“Business As Usual” or “BAU”

means the adoption of the Services into operations.

“Business Continuity Plan”

means the plan relating to the arrangements to be invoked to ensure continuity of the services as described in paragraph 3 of Schedule 8.4 (Business Continuity and Disaster Recovery);

“Calibration”

means those actions required to restore and maintain the detection performance of an RN Detector or RID so that it meets the Calibration Acceptance Criteria;

“Calibration Services”

means the Services specified as such in Annex 2 (Calibration Services) and Annex 9 (Calibration Services) of Schedule 2.1 (Services Description)

“Calibration Standards and Acceptance Criteria”

means the acceptance criteria set out in Table 6 of Annex 10 of Schedule 2.1 (Services Description);

“Capacity”

has the meaning set out in ITIL v3 (2011);

“Capacity Management”

see definition for “Service Capacity Management”;

“Cash”

means any credit balance on any deposit, savings, current or other account, and any cash in hand, which is:

- (a) freely withdrawable on demand;
- (b) not subject to any Security; and

denominated and payable in freely transferable and freely

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convertible currency;

"Cash Equivalent Investments"

means at any time:

- (a) certificates of deposit maturing within three months after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within three months after the relevant date of calculation and not convertible or exchangeable to any other Security;
- (c) commercial paper not convertible or exchangeable to any other Security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
 - (iii) which matures within three months after the relevant date of calculation; and
 - (iv) which has a credit rating of either A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent); or
- (e) any investment accessible within thirty (30) days in money market funds which have a credit rating of either A- or higher by Standard & Poor's Rating Services or Fitch Rating Ltd or A3 or higher by Moody's Investor Services Limited and which invest substantially all their assets in securities of the types described in sub-paragraphs (a) to (d) above,

and in each case, to which any member of the Group is

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beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security.

“CEDR”	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“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;
“Certificate of Costs”	means the certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate);
“Chairperson”	means the person appointed by the Authority to chair the Service Meetings pursuant to paragraph 5.3 of Schedule 8.5 (Governance and Contract Management) and as identified in the table at paragraph 5 of Annex 1 of Schedule 8.5 (Governance and Contract Management);
“Change”	any change to this Agreement;
“Change Control Procedure”	the procedure for changing this Agreement set out in Clause 52 (Variation)
“Change Evaluation”	has the meaning set out in ITIL v3 (2011);
"Change in Law"	means any change in Law or policy which impacts on the supply of the Goods and Services and performance of this Agreement which comes into force after the Effective Date;
“Change Management”	has the meaning set out in ITIL v3 (2011);
“Change Management Operating Model”	means the Authority process for the operation of Operational Change management;

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“Change of Control”	has the meaning given to it in Section 450 of the Corporation Tax Act 2010;
“Change Release Management Report”	means the report named as such in the table at paragraph 3 of Schedule 8.2 (Management Information Requirements);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (Contract Charges), including any Milestone Payment or Service Charge;
“Charging Location”	means a logical group of RN Detectors and/or Local IT Infrastructure that enable the execution of Screening for which Fixed Service Charges may accrue. Each Charging Location is given a unique reference number set out in the second column of Table 1 at Annex 1 to Schedule 7.1 (Contract Charges);
“CM Reports”	means the Configuration Management Asset Audit Report and the Configuration Management Logical Audit Report;
"Commercially Sensitive Information"	means the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to the Supplier, its IPRs or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
“Comparable Service”	means the supply of services to another customer (which is not the Authority) of the Supplier that are identical or materially similar to the Services (including in terms of scope, specification, volume and quality or performance);
“Comparable Supply”	means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Comparison Group”	means in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker as described in Schedule 7.3 (VFM & Benchmarking) which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;

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"Compensation Payment"	means the payment calculated in accordance with Paragraph 5 of Schedule 7.5 (Payments on Termination);
"Component"	has the meaning set out in ITIL v3 (2011);
"Confidential Information"	means the Authority Confidential Information and/or the Supplier's Confidential Information, as the context requires;
"Configuration Baseline"	has the meaning as described in ITIL v3 2011, a baseline of the Configuration that has been formally agreed with the Authority;
"Configuration Database"	has the meaning given to it in paragraph 2.1(a)(iii) of Schedule 8.3 (Exit Management);
"Configuration Item"	has the meaning set out in ITIL v3 (2011);;
"Configuration Management"	is the process responsible for maintaining information about Configuration Items required to deliver the Services including their relationships. This information is managed throughout the Lifecycle of the Configuration Items;
"Configuration Management Asset Audit Report"	means the report named as such in the table at paragraph 3 of Schedule 8.2 (Management Information Requirements);
"Configuration Management Database" or "CMDB"	has the meaning set out in ITIL v3 (2011);
"Configuration Management Logical Audit Report"	means the report named as such in the table at paragraph 3 of Schedule 8.2 (Management Information Requirements);
"Configurations Management System" or "CMS"	has the meaning set out in ITIL v3 (2011);
"Consolidated Net Debt"	means, as at any particular time, Total Debt less Cash and Cash Equivalent Investments at that time.
"Continuous Improvement"	means the process for identifying and implementing Improvements as set out in Clause 17.1 (Continuous Improvement) and paragraph 6 of Schedule 7.3 (Value For Money and Benchmarking);
"Contract Breakage Costs"	means the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
"Contract Charges"	means the Service Charges and any other charges payable by the Authority to the Supplier in accordance with Schedule 7.1 (Contract Charges)
	the initial financial model in a form agreed by the Supplier and

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“Contract Inception Report” the Authority in writing on or before the Effective Date;

“Contract Performance Point” or “CPP” means the criteria for achieving Milestone 4 as set out in the fifth column of the table at Annex 1 to Schedule 6.1 (Implementation Plan);

“Contract Review Meeting” means the meeting described in paragraph 6.3 of Schedule 8.5 (Governance and Contract Management), the terms of reference for which are set out in paragraphs 5 to 7 (inclusive) of Annex 1 to Schedule 8.5 (Governance and Contract Management);

“Contract Year” means:

- (a) a period of 12 months commencing on the Service Commencement Date; or
- (b) thereafter a period of 12 months commencing on each anniversary of the Service Commencement Date;

provided that the final Contract Year shall end on the expiry or termination of the Term;

“Contracts Finder” means the Government’s publishing portal for public sector procurement opportunities;

"Control" means control as defined in section 1124 and 450 Corporation Tax Act 2010, and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

“Controller” has the meanings given to it in the GDPR;

‘Collaboration’ Has the meaning given to it in Schedule 11 (Collaboration);

“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:

- (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:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer’s national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;

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- (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services,

but excluding:

- (aa) Overhead;
- (bb) financing or similar costs;
- (cc) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (dd) taxation;
- (ee) fines and penalties;
- (ff) amounts payable under Schedule 7.3 (Value for Money and Benchmarking); and
- (gg) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"COTS Software"

means commercial off-the-shelf software readily available from third party suppliers and includes Supplier COTS Software and

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Third Party COTS Software;

“Counter Notice”	has the meaning given to it in paragraph 6.2 of Schedule 8.6 (Dispute Resolution Procedure);
“Critical Performance Failure”	means the Supplier accruing Service Credits which meet or exceed the Service Credit Cap;
"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;
“CRTPA”	means the Contracts (Rights of Third Parties) Act 1999;
“CSR Assessment”	has the meaning given to it in paragraph 5.3 of Schedule 2.6 (Sustainability and Corporate Social Responsibility);
“Current Exit Plan”	has the meaning given to it in paragraph 5.6 of Schedule 8.3 (Exit Management);
“Cyclamen Application”	means the application or suite of applications that enable screening;
“Cyclamen OEM Software”	means the application or suite of applications from an original equipment manufacturer that enables screening;
"Data Controller"	has the same meaning as set out in the Data Protection Legislation;
“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 or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
"Data Processor"	has the same meaning as set out in the Data Protection Act 1998;
“Data Protection Impact Assessment”	means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data
"Data Protection Legislation"	means: <ul style="list-style-type: none"> (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (b) the DPA 2018 [subject to Royal Assent] to the extent that it

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relates to processing of personal data and privacy; and

all applicable Law about the processing of personal data and privacy;

“Data Protection Officer” has the meaning given to it in the GDPR;

"Data Subject" has the meaning given to it in the GDPR;

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“Day Rates” means the price per day of a particular service, in terms of the staff grades and SFIA skill sets specified in Table 3 (Day Rates) in Annex 1 of Schedule 7.1 (Contract Charges);

“DDAT Representative” means the person representing the Authority identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);

“Dedicated Supplier Personnel” means all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;

“Deductions” means all Service Credits, Delay Payments, Delay Deductions or any other deduction which is paid or payable to the Authority under this Agreement;

"Default" means any breach of the obligations of the Supplier (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier or Supplier Personnel in connection with or in relation to the subject-matter of this Agreement and in respect of which the Supplier is liable to the Authority;

“Delay” means a delay:

- (a) to the Achievement of a Milestone by its Milestone Date; or
- (b) caused for whatever reason as described in this Agreement;

“Delay Accrual Date” has the meaning given to it in paragraph 4.1(b) of Part B to

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Schedule 7.1 (Contract Charges);

“Delay Deduction”	means a payment, made by the Supplier to the Authority upon the Supplier serving a Delay Notice on the Authority calculated in accordance with paragraph [4.4] of Part B to Schedule 7.1 (Contract Charges);
“Delay Deduction Days”	means the period of time, in days, between the planned Milestone Date and the date the Milestone is Achieved
“Delay Deduction Period”	means, in relation to a Delay Deduction, the period from (and including) the relevant Milestone Date to (and including) the date falling the number of days used to calculate the relevant Delay Deduction after the Milestone Date;
“Delay Deduction Rate”	means the percentage that the daily Service Charge will be reduced due to the late delivery of a Milestone, as specified in Table 4 to this Schedule 7.1 (Contract Charges)
“Delay Payment”	means the sum of monies to be paid by the Supplier to the Authority, in accordance with paragraph 4 of Part B of schedule 7.1 (Contract Charges)
“Delay Payment Rate”	means the daily rate at which Delay Payments shall accrue, which shall be 1% of the relevant Implementation Service Charge;
“Delay Notice”	has the meaning given to it in paragraph 4.2 of Part B to Schedule 7.1 (Contract Charges);
“Delivery”	means the point at which the Goods and/or Spares are handed to the Authority in accordance with Clauses 10.3 to 10.6 (inclusive), and Delivered shall be construed accordingly;
"Deliverable"	means either: <ul style="list-style-type: none">(a) in relation to a Milestone, the deliverables that must be completed by the Supplier in order to Achieve that Milestone as set out in Annex 2 of Schedule 6.1 (Implementation Plan); or(b) an item or feature delivered or to be delivered by the Supplier at any stage during the performance of this Agreement, as the context requires;
“Design Readiness Review” or “DRR”	has the meaning as described in Annex 1 of Schedule 6.1 (Implementation Plan), the combined objective of Milestone 1, the Deliverables of which are described in Annex 2 of Schedule 6.1 (Implementation Plan);

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"Demand"	has the meaning set out in ITIL v3 (2011);
"Demand Management"	has the meaning set out in ITIL v3 (2011);
"Detailed Implementation Plan"	means the detailed Implementation Plan setting out detailed steps for the Implementation of the Services agreed between the Parties under paragraph 3 of Schedule 6.1 (Implementation Plan);
"Detectors"	means the sensor solutions able to identify and provide output for gamma and neutron material;
"Detector and Local IT Management"	means the Services specified as such in Annex 4 (Detector and Local IT Management) of Schedule 2.1 (Services Description)
"Detection Equipment"	means a complete system that is necessary to independently fulfil Screening and is not a Spare;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of 12 hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disaster Recovery"	means the process of restoration of the Services by the provision of the Disaster Recovery Services;
"Disaster Recovery Plan"	means the plan designed to ensure continuity of the Services in the event of a Disaster as described at paragraph 4 of Schedule 8.4 (Business Continuity and Disaster Recovery);
"Disaster Recovery Services"	means the Disaster Recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to Schedule 8.4 (Business Continuity and Disaster Recovery);
"Disaster Recovery System"	means the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
"Dispute"	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;

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"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 8.5 (Dispute Resolution Procedure);
"Documentation"	means the technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation including designs, relating to the Supplier Software;
"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;
"DPA 2018"	has the meaning given to it in the GDPR;
"Draft Exit Plan"	has the meaning given to it in paragraph 5.1 of Schedule 8.3 (Exit Management);
"Duty Manager"	means the person identified as such in Schedule 9.2;
"Earned Profit"	means, in relation to any Profit Share Assessment Point, the Actual Profit for the Profit Share Assessment Point divided by the Actual Revenue for the Profit Share Assessment Point, and expressed as a percentage;
"EBIT"	means, in relation to any Relevant Period, the total consolidated operating profit of the Group for that Relevant Period before taking into account: <ul style="list-style-type: none"> (a) Interest Payable; (b) Tax; (c) any share of the profit of any associated company or undertaking, except for dividends received in cash by any member of the Group; and (d) extraordinary and exceptional items,

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as determined from the financial statements of the Group.

"EBITDA"

means, in relation to any Relevant Period, the total consolidated operating profit of the Group for that Relevant Period:

(a) before taking into account:

(i) Interest Payable;

(ii) Tax;

(iii) any share of the profit of any associated company or undertaking, except for dividends received in cash by any member of the Group; and

(iv) extraordinary and exceptional items; and

(b) after adding back all amounts provided for depreciation and amortisation for that Relevant Period,

as determined from the financial statements of the Group.

"Effective Date"

means the date that this Agreement is signed;

"Early Life Support" or "ELS"

means a period of time as stated in Schedule 6.1 (Implementation Plan) within the lifecycle prior to the Authority agreeing that all the criteria have been met and the Services being stable for them to enter into Service Go-live and to verify that the Service meets the Authority's Service requirements as described in Schedule 2.1 (Service Description).

"Eligible Employee"

means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

"ELS Exit Criteria" or "Early Life Support Exit Criteria"

means the criteria for satisfaction that the ELS stage is formally completed;

"Emergency Audit"

means an Audit carried out in accordance with Clause 44.1 without notice for one of the reasons set out in Clause 44.1.9;

"Emergency Changes"

means actions that are actioned by the Supplier that are instructed by the Authority;

"Emergency Variation"

has the meaning given to it in Clause 52.7.1;

"Emergency Variation Procedure"

means the procedure for making an Emergency Variation as set out in Clause 52.7;

"Emergency Exit"

means any termination of this Agreement which is a:

(a) termination of the whole or part of this Agreement in

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accordance with Clause 38 (Termination and Step-In Rights), except where the period of notice given under that Clause is greater than or equal to 6 months;

- (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 38 (Termination and Step-In Rights); or

wrongful termination or repudiation of this Agreement by either Party;

“Employee Liabilities”

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

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

“Employment Regulations”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006”;

“Enhanced Detection Capability”

means the Cyclamen business process of using a detector to identify the isotope associated to an alarm generated by the Primary Screening Capability. This includes the categorisation

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and filtering of alarms based on that isotope identification;

"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equipment"	means the tools and equipment that are used by the Supplier for the provision of services;
"Equivalent Services Data"	means, in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 5.4.8 and 5.4.9 of Schedule 7.3 (Value for Money and Benchmarking) provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
"Estimated Year 1 Contract Charges"	means the Contract Charges payable in the first Contract Year as set out in the AET Baseline Financial Model;
"Event "	has the meaning set out in ITIL v3 (2011);
"Event Management"	has the meaning set out in ITIL v3 (2011);
"Event Monitoring"	means the process that monitors all events that occur through the IT infrastructure. It allows for normal operation and also detects and escalates exception conditions;
"Exceptional Profit Share Assessment Point"	means the point in time at which an exceptional Profit Share Assessment is carried out on the Authority's instructions in accordance with paragraph 3.3 of Schedule 7.3 (Value for Money and Benchmarking);
"Exit Assistance Notice"	has the meaning given to it in paragraph 7.1 of Schedule 8.3 (Exit Management);
"Exit Assistance Period"	means the period during which it is anticipated that Exit Services will be required as defined in paragraph 7.1(c) of Schedule 8.3 (Exit Management);
"Exit Charges"	means the charges related to the provision of Exit Services and calculated in accordance with Paragraph 10 of Schedule 8.3 (Exit Management);
"Exit Charges Cap"	means the maximum cap on Exit Charges as set out in Paragraph 10 of Schedule 8.3 (Exit Management);
"Exit Information"	has the meaning given to it in paragraph 4.2 of Schedule 8.3 (Exit Management);

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“Exit Management”	means the requirements as set out in Schedule 8.3 (Exit Management) detailing the requirements for Ordinary and Emergency Exit;
“Exit Manager”	means the persons appointed by the Supplier and the Authority responsible for managing the Parties’ respective obligations under Schedule 8.3 (Exit Management), appointed under paragraph 3.1 of Schedule 8.3 (Exit Management);
"Exit Plan"	means the exit plan agreed between the Supplier and the Authority in accordance with paragraphs 5 and 6 of Schedule 8.3 (Exit Management) describing the services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier;
“Exit Services”	means the services required by the Authority to support Exit Management in accordance with the terms of Schedule 8.3 (Exit Management);
“Expedited Dispute Timetable”	means the reduced timetable for the resolution of Disputes set out in Paragraph 2 of Schedule 8.6 (Dispute Resolution Procedure);
"Expert"	means, in relation to a Dispute, a person appointed in accordance with paragraph 5.2 of Schedule 8.6 to act as an expert in relation to that Dispute;
“Expert Determination”	means determination by an Expert in accordance with paragraph 5 of Schedule 8.6 (Dispute Resolution Procedure);
“Extension Term”	means the period from and including the expiry of the Initial Term to and including the Extension Term Expiry Date;
“Extension Term Expiry Date”	means, where the Authority has elected to extend this Agreement in accordance with Clause 4.2, the date on which the Agreement is to expire;
“Failed Change” or “Failed Changes”	has the meaning as defined in Annex 3 to Part A: Key Performance Indicator (KPI) Table (Target Timeframe) as per Schedule 2.2 (Performance);
“Failed Incident”	means an Incident that is not Resolved within the relevant Service Level Target Duration;
“Failed P1 Incident”	means a P1 Incident that is not Resolved within the P1 Incident Service Level Target Duration;
“Failed P2 Incident”	means a P2 Incident that is not Resolved within the P2 Incident Service Level Target Duration;
“Failed P3 Incident”	means a P3 Incident that is not Resolved within the P3 Incident Service Level Target Duration;

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“Failed P4 Incident”	means a P4 Incident that is not Resolved within the P4 Incident Service Level Target Duration;
“Failed P5 Incident	means a P5 Incident that is not Resolved within the P4 Incident Service Level Target Duration;
“Fair Deal Employees”	means those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
“Final Reconciliation”	means the final reconciliation to be provided by the Supplier to the Authority in accordance with paragraph 6 of Schedule 7.4 (Financial Model);
“Financial Distress Escrow Account”	has the meaning given to it in paragraph 2.3.1(a) of Schedule 7.2 (Financial Distress);
“Financial Transparency Objectives”	has the meaning given to it in Clause 44.2.2;
“Finance Management”	has the meaning set out in ITIL v3 (2011);
"Financial Indebtedness"	<p>means any indebtedness for or in respect of (without double counting):</p> <ul style="list-style-type: none"> (a) moneys borrowed; (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease; (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis); (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial

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institution; and

- (h) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (g) above.

“Financial Model”

means the AET Baseline Financial Model or the Outturn Financial Model as the context requires;

“Fixed RN Detector”

means an RN Detector and such other hardware and software components deemed necessary by the Authority to support normal operations at a Site; including but not limited to RN Detectors, CCTV and motion sensors, that is or is intended to be located in such a manner as to require civil engineering to change its location;

“Fixed Service Charge”

has the meaning given to that term in paragraph 1.1(a) of Part A to Schedule 7.1 (Contract Charges);

"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 Event"

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

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

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	precautions against the event or occurrence by the Party concerned;
“Force Majeure Notice”	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 services to the Authority before the either the Relevant Transfer Date or Service Go-Live (as the context requires) 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 or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Authority;
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679):
“General Anti-Abuse Rule”	means: (a) the legislation in Part 5 of the Finance Act 2013; and 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;
“Good Value”	means, in relation to a Benchmarked Service, that: (a) having taken into account the Service Levels, the value for money of the Contract Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and (b) any Service Levels applicable to that Benchmarked Service are, having taken into account the Contract Charges, equal to

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or better than the median service levels for the Comparable Service using Equivalent Services Data;

"Goods"	means any goods which the Authority may require the Supplier to procure, store, maintain and/or install on the Authority's behalf under this Agreement as a result of a new or changed requirement being introduced by the Authority and ordered in accordance with paragraph 5.3 of Part A to Schedule 7.1 (Contract Management), including new Detection Equipment and additional Spares but not including consumables.
"Group"	means any subsidiary or Holding Company from time to time of the Supplier and any subsidiary from time to time of a Holding Company of that party;
"Guarantee"	means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the Effective Date which is in the form set out in Schedule 10 (Parent Company Guarantee)
"Guarantee Period"	means the service delivery period;
"Guarantor"	means Leonardo SpA, a company registered in Italy with company number 00401990585 and whose registered office is at Piazza Monte Grappe 4, 00195 Roma, Italy;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Hardware Asset Management"	Has the same meaning as Asset Management set out in ITIL v3 (2011);
"Health and Safety Requirements"	means the compliance with all relevant health and safety legislation including Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to the providing of Goods, Spares and Services under this Agreement;
"HODDaT"	means the Home Office Digital Data and Technology Directorate that is acting as the Service Integrator for Cyclamen;
"HODDaT Request for Change Process"	means the process for implementing Operational Changes outlined in the document 'HODDaT Request for Change' issued by the Authority to the Supplier and updated from time to time;
"HO Data Centre" or "HO"	means the Authority's Data Centre where non-cloud centrally

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DC”	managed IT Infrastructure is hosted and supported;
“HO Service Integration Model”	means the service integration model using HODDaT as the Service Integrator in a SIAM model;
"Holding Company"	has the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
"ICT"	means information and communications technology;
"ICT Environment"	means the Authority System and the Supplier System;
“ICT Management”	means the Services described in Annex 6 (ICT Management) of Schedule 2.1 (Services Description);
“Impact Assessment”	means an assessment of a Variation Request in accordance with Clause 52.4 (Impact Assessments) of this Agreement;
“Implementation”	means the process by which the Services are to be implemented, in accordance with Schedule 6.1 (Implementation Plan);
“Implementation Plan”	means the implementation plan developed pursuant to Schedule 6.1 (Implementation Plan);
“Implementation Period”	means the period commencing from the Effective Date through to Service Commencement Date;
“Implementation Service Charge”	has the meaning given to that term in paragraph 1.1(b) of Part A to Schedule 7.1 (Contract Charges);
“Improvement”	means an improvement or innovation relating to the delivery of the Services identified by the Supplier through the Improvement Considerations in accordance with Clause 17.1 and paragraph 6 of Schedule 7.3 (Value for Money and Benchmarking);
"Incident"	has the meaning set out in ITIL v3 (2011);
“Incident Baseline Credit”	means the baseline used to calculate an Incident Service Credit relating to an Incident based on the Service Level Target Duration for a P1 Incident, the Monthly Service Charge applicable for the relevant Month, the number of Service Hours in the relevant Month and the number of Systems at all Sites, calculated in accordance with the following formula:

$$IBC = (SLTD / SHM) \times FSC$$

Where:

IBC = Incident Baseline Credit;
 SLTD = the Service Level Target Duration for a P1 Incident;

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SHM = the number of Service Hours in the relevant Month; and
 FSC = the Fixed Service Charges for the relevant Cyclamen Site payable by the Authority to the Supplier in that Month;

“Incident Duration” means the period of time in hours and minutes between an Incident being raised and the Incident being Resolved as recorded in the ITSM;

"Incident Management" has the meaning set out in ITIL v3 (2011);

“Incident Management Operating Model” means the Home Office process for the operation of Incident Management;

“Incident Priority Levels” means the collective name for:

- (a) P1 Incident;
- (b) P2 Incident;
- (c) P3 Incident;
- (d) P4 Incident; and

“Incident Service Credits” means Priority Level 5 Service Incident. means Service Credits that accrue in relation to Service Level Failures of:

- (a) Service Level 2 (Incident Resolution (P1 Incident));
- (b) Service Level 3 (Incident Resolution (P2 Incident));
- (c) Service Level 4 (Incident Resolution (P3 Incident)); and
- (d) Service Level 5 (Incident Resolution (P4 Incident));

“Indemnified Person” means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licences assigns or novate Relevant IPR or rights in Relevant IPRs in accordance with this agreement

“Indexation” is a technique to adjust charges by means of a price index;

"Information" has the meaning given under section 84 of the FOIA;

“Information Assurance Policy” means the *Information Security Strategy, supporting IA structures, policies and processes for HMG departments and their agencies*, published by the National Cyber Security Centre and updated from time to time, accessible at <https://www.ncsc.gov.uk/guidance/information-risk-management-hmg-ia-standard-numbers-1-2>;

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“Initial Term”	means the period from and including the Effective Date and expiring on the Initial Term Expiry Date;
“Initial Term Expiry Date”	means the fifth anniversary of the Service Commencement Date;
“Insolvency Event”	<p>means:</p> <ul style="list-style-type: none">(a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:<ul style="list-style-type: none">(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;(b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;(c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;(d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;(e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;(f) where the other Party is a company, a LLP or a partnership:<ul style="list-style-type: none">(i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection

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with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

- (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;
- (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
- (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or

any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Insurances”

has the meaning given to it in paragraph 1 of Schedule 2.5 (Insurance Requirements);

"Intellectual Property Rights" or "IPRs"

means:

- (a) patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website addresses, trade or business names, rights in know-how and moral rights and other similar rights or obligations whether registerable or not;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

“Integrity”

means a system's state where its intended functions are being performed without degradation or being impaired by other changes or disruptions to its environments;

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"Interest Payable"	means, in relation to any Relevant Period, the aggregate amount of interest, acceptance commission, cost or expense (paid or capitalised) of the Group (but excluding all debt related upfront fees), excluding interest shown in the financial statements of the Group relating to IAS19;
"Interest Receivable"	means, in relation to any Relevant Period, interest income of the Group in respect of that Relevant Period;
"Invitation to Tender (ITT)"	Invitation to tender for the supply of services for the service and maintenance of fixed and mobile RadioNuclide detection equipment;
"IPRs Claim"	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
"ISMS"	(c) means the information security management system and processes developed by the Supplier in accordance with Paragraph 3 of Schedule 2.4 (Security Management) and as updated from time to time in accordance with Schedule 2.4 (Security Management).
"ITIL"	means the Information Technology Infrastructure Library v3 2011;
"ITSM Toolset"	means the Authority's IT service management system, access to which will be provided by the Authority;
"ITT Response"	means the response submitted by the Supplier to the Invitation to Tender issued by the Authority dated 17/09/2018;
"Key Milestone"	means the milestones as set out in Annex 1 and Annex 2 of Schedule 6.1 (Implementation Plan);
"Key Performance Indicator" or "KPI"	means the key performance indicators set out in Table 1 of Annex 3 to Part A of Schedule 2.2 (<i>Performance Levels</i>);
"Key Personnel"	means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (Key Personnel) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clause

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20 (Supplier Personnel and Key Personnel);

“Key Roles”

means a role described as a key role in Schedule 9.2 (Key Personnel) and any additional roles added from time to time in accordance with Clause 20 (Supplier Personnel and Key Personnel);

“Key Sub-contract”

means each Sub-contract with a Key Sub-contractor;

“Key Sub-contractor”

any Sub-contractor:

- (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or

with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Contract Charges forecast to be payable under this Agreement (as set out in the Financial Model);

"Know-How"

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Authority's possession before the Effective Date;

“Knowledge Article”

has the meaning set out in ITIL v3 (2011);

"Knowledge Management"

has the meaning set out in ITIL v3 (2011);

“Knowledge Management Operating Model”

- (b) is the Authority's process for the operation of Knowledge Management;

“KPI Score”

means the score achieved in relation to each KPI that is measured on a Monthly basis as set out in the fifth column of the table at Annex 3 to Part A (Key Performance Indicator (KPI) Table) of Schedule 2.2 (Performance) headed “Key Performance Indicator Measure”;

“KPI Target”

means the target score for each KPI set out in the seventh column of the table at Annex 3 to Part A (Key Performance Indicator (KPI) Table) of Schedule 2.2 (Performance) headed “KPI Target”;

“Lane”

means that part of a Site where traffic passes through RN Detectors for the purpose of Screening;

"Law"

means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply means any applicable Act of Parliament, subordinate legislation within the meaning of

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Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

“LED” means the Law Enforcement Directive (*Directive (EU) 2016/680*);

“Licensed IPRs” means:

- (a) the Authority Software;
- (b) the Authority Background IPRs;
- (c) the Authority Data;
- (d) the Project Specific IPRs; and

the Specially Written Software,

“Local ICT Infrastructure” means Port based information and communications technology used in the operation of Cyclamen excluding the RN Detection ICT;

“Losses” means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

"Major Incident" has the meaning set out in ITIL v3 (2011);

“Major Incident Management” has the meaning set out in ITIL v3 (2011);

"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;

“Man Day” means 8 hours of work undertaken, whether such hours are worked by one or more individuals, are worked consecutively or are worked on the same day;

“Management Information” means the management information specified in Schedule 8.2 (Management Information);

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“Manufacturer”	means the original equipment manufacturer applying to both software and hardware;
“Manufacturer’s Specification”	means the processes and methods necessary to produce or maintain a given product;
“Material Test Issue”	means a Test Issue of Severity Level 1 or Severity Level 2;
“Material Breach”	means a material breach of this Agreement, including any breach by the Supplier of , Clause 14.4 (Disruption), Clauses 26.3 (IPRs Indemnity), 29 (Confidentiality), Clause 30 (Official Secrets Act and Finance Acts), Clause 33 (Warranties and Representations), Clause 43 (Prevention of Bribery and Corruption), Clause 44 (Records and Audits Access), Clause 46 (Prevention of Fraud), Clause 47 (Transfer and Sub-Contracting), Clause 56 (Conflicts of Interest), paragraph 6.4 of Part A to Schedule 2.2 (Performance) and paragraph 2.2 of Part B to Schedule 2.2 (Performance), paragraph 5.5.5 of Schedule 7.3 (Value for Money and Benchmarking) or any provision of this Agreement that is stated to grant the Authority an explicit right of termination;
“Mediation Notice”	has the meaning given to it in paragraph 3.2 of Schedule 8.6 (Dispute Resolution Procedure);
“Mediator”	means the independent third party appointed in accordance with Paragraph 4.2 of Schedule 8.6 (Dispute Resolution Procedure) to mediate a Dispute;
“Milestone”	means an event or task described in the Implementation Plan and set out at Annex 1 to Schedule 6.1 (Implementation Plan) which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	means the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 1 of Schedule 6.2 (<i>Testing Procedures</i>);
“Milestone Date”	means the date by which a Milestones is to be Achieved in accordance with the Implementation Plan as set out in the table at Annex 1 to Schedule 6.1 (Implementation Plan);
“Milestone Delay”	means the failure by the Supplier to Achieve a Milestone by its Milestone Date;
“Milestone Payment”	means the value, as portrayed in column 5 of Table 4 to this Schedule 7.1 (Contract Charges) to be paid to the Supplier for the achievement of the respective Milestone;
“Mobile RN Detector”	means an RN Detector and such other hardware and software components deemed necessary by the Authority to support normal operations at multiple Sites, that can be moved easily and freely; typically, but not necessarily, by being mounted on

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a vehicle;

"Month"	means calendar month and "monthly" shall be interpreted accordingly;
"Monthly Reports"	means all the reports that are required to be provided by the Supplier to the Authority each Month pursuant to the provisions of Schedule 8.2 (Management Information);
"Multi-Party Dispute"	means a dispute which involves the Parties and one or more Related Third Parties;
"Multi-Party Dispute Representatives"	has the meaning given in paragraph 8.6 of Schedule 8.6 (Dispute Resolution Procedure);
"Multi-Party Dispute Resolution Board" or "MPDR Board"	has the meaning given to it in paragraph 8.6 of Schedule 8.6 (Dispute Resolution Procedure);
"Multi-Party Dispute Resolution Board Meeting" or "MPDR Board Meeting"	has the meaning given to it in paragraph 11.1 of Schedule 11 (Collaboration);
"Multi-Party Dispute Resolution Procedure"	has the meaning given to it in paragraph 8.1 of Schedule 8.6 (Dispute Resolution Procedure);
"Multi-Party Procedure Initiation Notice"	has the meaning given to it in paragraph 8.2 of Schedule 8.6 (Dispute Resolution Procedure);
"Net Book Value"	means the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
"Net Interest Payable"	means, in relation to any Relevant Period, Interest Payable for that Relevant Period less Interest Receivable for that Period.
"New Fair Deal"	means a non-statutory policy (https://www.gov.uk/government/publications/fair-deal-guidance-a-gad-technical-bulletin) that details the principles that are intended to ensure that staff compulsorily transferred out of the public sector will continue to have access to their existing public service pension scheme;
"Non-trivial Customer Base"	means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;

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“Notified Sub-contractor”	means a Sub-contractor identified in the Annex (List of Notified Sub-contractors) to Schedule 9.1 (Staff Transfer) to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Normal Operation”	means the state in which the system (as a whole or component parts) is operating as per its design, fully enabling the performance of the business operation;
“NORM” or “NORMs”	means naturally occurring radioactive materials;
“Notifiable Default”	has the meaning given to it in Clause 15.1;
“Object Code”	means software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Onboarding Activity”	means the activity undertaken to add the Supplier to the ITSM toolset, familiarisation of the Policies and Processes and completion of Acceptance into Service and associated artefacts;
“Onboarding Control Document” or “OCD”	means the document which captures the data required to input a new service to the Authorities chosen ITSM Toolset & associated Toolsets as defined in Annex 2 of Schedule 6.1 (Implementation Plan) that is a deliverable under the relevant Milestone;
“Open Book Accounts”	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

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

“Open Source”

means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;

“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 IPRs 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;

“Operational Change”

has the meaning given to it in Clause 52.9.1;

“Operation Change Notice” has the meaning given to it in Clause 52.9.2;

“Operational Change Variation Request” has the meaning given to it in Clause 52.9.4;

“Operational Readiness Review” or “ORR” has the meaning as described in Annex 1 of Schedule 6.1 (Implementation Plan), the combined objective of Milestone 2, the deliverables of which are described in Annex 2 of Schedule 6.1 (Implementation Plan);

“Operational Service Commencement Date” means in relation to a Service, the later of:

- (a) the date identified in the Implementation Plan upon which the Service is to commence; and
- (b) where the Implementation Plan states that the Supplier must have Achieved the relevant Milestone that has a ATP before it can commence the provision of that Service, the date upon which the Supplier Achieves the relevant Milestone and the ATP;

“Operations Management” has the meaning set out in ITIL v3 (2011);

“Optional Services” means the Services specified as such in Annex 7 (Optional Services Provision) of Schedule 2.1 (Services Description)

“Ordinary Exit” means any termination or expiry of this Agreement which occurs:

pursuant to Clause 38 (Termination and Step-In Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or

“OSCT Representative” as a result of the expiry of the Term;

means the person representing the Authority identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);

“Other Supplier Contract” means, in relation to a Related Supplier, the contract between that Related Supplier and the Authority;

“Outage Duration” means, where there is an Unplanned Outage at a Charging Location, the duration in hours and minutes of the Unplanned Outage multiplied by the number of lanes at which Screening was unavailable during the Unplanned Outage, calculated in accordance with the following formula:

$$OD = UO \times UL$$

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Where:

OD = the Outage Duration

UO = the duration in hours and minutes of the Unplanned Outage at the relevant Charging Location; and

UL = the number of Lanes at which Screening was unavailable during the Unplanned Outage;

“Outline Implementation Plan”

means the outline Implementation Plan submitted by the Supplier to the Authority as part of its bid for this Agreement as detailed in paragraph 2.1 of Schedule 6.1 (Implementation Plan);

“Outturn Financial Model”

means a financial model based on the AET Baseline Financial Model including actual figures as requested from time to time by the Authority;

“Overage”

means, at a Profit Share Assessment Point where the Earned Profit is greater than the Threshold Margin, the sum by which the Actual Profit is over the Threshold Profit, calculated in accordance with the following formula:

$$O = AP - TP$$

Where:

O = Overage;

AP = the Actual Profit at the relevant Profit Share Assessment Point; and

TP = the Threshold Profit at the relevant Profit Share Assessment Point;

“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” or the day cost set out in Table 3 of Annex 1 in Schedule 7.1 (Contract Charges);

"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;

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"Partial Termination"	means the partial termination of this Agreement in accordance with Clause Error! Reference source not found. ;
"Participating Member State"	means any member state of the European Community that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union;
"Party"	means the Supplier or the Authority and "Parties" shall mean both of them;
"Pass-Through Expenses"	means those costs of the Supplier that are charged to the Authority on a at cost pass-through basis;
"Performance Data"	means the data measured and recorded by the Supplier to assess its performance against the Service Levels and Key Performance Indicators
"Performance Monitoring Report"	means a standard report extracted from (and provided by) the Authority chosen ITSM Toolset, to which the Supplier is required to provide context and narrative;
"Performance Review Meetings"	means the monthly review of Supplier performance focussed on the Performance Monitoring Report.
"Personal Data"	has the meaning given to it in the GDPR;
"Personal Data Breach"	Has the meaning given to it in the GDPR;
"Personal RN Detector"	means an RN Detector typically held or worn on the person;
"Plan for Growth"	means the Plan for Growth policy paper published by HM Treasury on 20 March 2013 that can be accessed at https://www.gov.uk/government/publications/plan-for-growth--5 ;
"Planned Maintenance"	means the requirements specified as such in Annex 8 (Planned Maintenance) of Schedule 2.1 (Services Description)
"Planned Maintenance Services"	means the Services specified as such in Annex 1 (Planned Maintenance Services) of Schedule 2.1 (Services Description)
"Planned Unavailability"	means any unavailability of the system or service that has been agreed by the authority as being "planned";
"Policies and Processes of HODDaT"	means the policies and processes for the maintenance of IT infrastructure, service integration and/or the Services provided by HODDaT as at the Effective Date or as updated from time to

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time in accordance with Clause 52.8 (Updates to the Policies and Processes of HODDaT) and **“Policy or Process of HODDaT”** shall be construed to mean an individual policy or process relating to the maintenance of IT infrastructure, service integration and/or the Services as the context requires;

“Port” has the meaning set out in the Customs and Excise Management Act 1979;

“Port Authority” means the organisation or organisations, external to the Authority, that own, manage or maintain Ports and/or Sites;

“Portable RN Detector” means an RN Detector and such other hardware and software components deemed necessary by the Authority to support normal operations at multiple sites, that can be moved easily and freely without requiring civil engineering, specialist personnel or equipment;

“Portable Appliance Testing” or “PAT” means the examination of portable electrical appliances and equipment to ensure they are safe to use in accordance with The Electricity at Work Regulations 1989

“Premises” means the location where the Services are to be provided which includes (but not limited to) the Authority Premises;

“Premises Inspection Date” means the date on which the Milestone Achievement Certificate for Milestone 2 (Operational Readiness Review) is issued;

“Primary Screening Capability” means the Cyclamen business process of using a RN Detector (including associated Local IT Infrastructure and software) to determine the presence of nuclear and/or radiological materials. This is inclusive of the detection of ‘alarming’ and ‘non-alarming’ traffic at both primary and secondary detection stages, the processing of screening data, identification of alarms and the presentation of screening data to end users (as per individual site operating processes). This excludes the use of the Enhanced Detection Capability for isotope identification or filtering.

“Priority Factor” means, in relation to an Incident Service Credit, the number used to calculate the Incident Service Credit, which is proportionate to the Incident Priority Level of the relevant Incident. The Priority Factors for each Incident Priority Level are as set out below:

P1 Incident = 20
P2 Incident = 15
P3 Incident = 10

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P4 Incident = 5

means,

**“Priority Level One Incident”
or “P1 Incident”**

- (a) an Incident where Primary Screening Capability cannot be operated at a whole Site; or
- (b) the service has degraded sufficiently so that the business process cannot be operated at that Site as defined in Schedule 2.2 (Performance);

means:

**“Priority Level Two Incident”
or “P2 Incident”**

- (a) an Incident where Primary Screening Capability at a site is partially unavailable; or
- (b) is degraded to the point that the business operation at that site cannot be wholly conducted;

“Priority Level Three Incident” or “P3 Incident”

means an Incident where the Service has lost resilience; however, it is possible to perform the Primary Screening Capability;

**“Priority Level Four Incident”
or “P4 Incident”**

means an Incident which does not cause any loss of Primary Screening Capability, or resilience, at a site.

“Priority Level Five Service Incident or P5 Incident”

means a routine, non-impacting query or request.

“Problem”

has the meaning set out in ITIL v3 (2011);

**“Problem Management”
“Problem Management
Operating Model”**

has the meaning set out in ITIL v3 (2011);
means the Authority process for the operation of Problem Change Management;

"Processing"

has the meaning given it in GDPR, and **“Process”** and **“Processed”** shall be interpreted accordingly;

“Processor”

has the meaning given to it in the GDPR;

“Profit Margin”

means, at each Profit Share Assessment Point:

- (a) in relation to a Scheduled Profit Share Assessment Point, the Supplier's projected profit margin, as detailed in the third column of the table at Appendix 2 to Schedule 7.3 (Value for Money and Benchmarking); or

where the circumstances described in paragraph 3.7 of Schedule 7.3 (Value for Money and Benchmarking) exist, the Supplier's projected profit margin at the Scheduled Profit Share Assessment Point that is closest in time to the date on which the Agreement terminates, as detailed in the [third] column of the table at Appendix 2 to Schedule 7.3 (Vale for money and Benchmarking);

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“Profit Already Paid”	(b) means the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
“Profit Share”	has the meaning given to it in paragraph 3.1 of Schedule 7.3 (Value for Money and Profit Sharing);
“Profit Share Amount”	<p>means the total amount to be apportioned between the Parties as a result of a Profit share Assessment calculated in accordance with the following formula:</p> $PSA = AR \times (EP - TM)$ <p>Where</p> <p>PSA = Profit Share Amount; AR = the Actual Revenue at the relevant Profit Share Assessment Point; EP = the Earned Profit at the relevant Profit Share Assessment Point; and TM = the Threshold Margin at the relevant Profit Share Assessment Point;</p>
“Profit Share Assessment”	means the assessment carried out for calculating Profit Share in accordance with paragraph 3 of Schedule 7.3 (Value For Money and Profit Sharing);
“Profit Share Assessment Point”	<p>means the point in time at which a Profit Share Assessment is carried out and can refer to either:</p> <p>(a) a Scheduled Profit Share Assessment Point; or</p> <p>(c) where the circumstances described in paragraph 3.7 of Schedule 7.3 (Value for Money and Benchmarking) exist, the date on which the Agreement is terminated;</p>
“Profit Share Bands”	means the rates at which any excess profit over the Threshold Margin at a Profit Share Assessment Point will be shared between the Authority and the Supplier, as set out in the table at Paragraph 4 of Schedule 7.3 (Value for Money and Benchmarking);
“Profit Share Calculation”	means the report provided by the Supplier to the Authority in which any Profit Share is calculated at a Profit Share Assessment Date in accordance with Paragraph 3.8 to 3.12 of Schedule 7.3 (Value for Money and Benchmarking);
“Profit Share Period”	<p>means:</p> <p>(a) in relation to Scheduled Profit Share Assessment Point 1, the period from (and including) the Effective Date to (but excluding) Profit Share Assessment Point 1;</p> <p>(b) in relation to any other Scheduled Profit Share Assessment Point, the period from (and including) the previous Profit Share Assessment Point to (but excluding) the relevant</p>

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Scheduled Profit Share Assessment Point; or

where the circumstances described in paragraph 3.7 of Schedule 7.3 (Value for Money and Benchmarking) exist, the period from (and including) the previous Profit Share Assessment Point to (and including) the date on which the Agreement terminates;

“Profit Sharing”

means the provisions of paragraphs 3 and 4 of Schedule 7.3 (Value For Money and Benchmarking);

“Programme Director”

(b) means the person representing the Supplier identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);

“Prohibited Act”

means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

(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; or

(b) committing any offence:

(i) under the Bribery Act 2010; or

(ii) under legislation creating offences concerning fraudulent acts; or

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority and/or Authority ; or

defrauding, attempting to defraud or conspiring to defraud the Authority.

“Project Manager”

means the person representing the Supplier identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);

"Project Specific IPRs"

means:

(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

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(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;

but shall not include the Supplier Background IPRs or the Specially Written Software;

“Proof of Concept” or “POC” means a prototyping/pilot exercise to prove that the Services or Goods meet the desired design;

"Property" means the property, other than real property and IPR, issued or made available to the Supplier by the Authority in connection with this Agreement;

“Protective Measures” (c) means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Public Sector Equality Duty” means the public sector equality duty under S149 of the Equality Act 2010;

“Quality Plan” means the plans provided by the Supplier to the Authority under Deliverable 10 of Milestone 1, as set out in the table at Annex 2 to Schedule 6.1 (Implementation Plan);

"Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with and any other applicable quality standards, Government codes of practice and guidance;

“RAID Log” means a log for capturing “Risks, Assumptions, Issues and Dependencies”;

“Rating Agency” means any one of the rating agencies listed in Annex 2 of Schedule 7.2 (Financial Distress) and **“Ratings Agencies”** shall be construed to mean two or more of them;

“Records” has the meaning given to it in Clause 44.1.1;

“Rectification Plan” means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default

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“Rectification Plan Failure” means:

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 15.3 (*Submission of the draft Rectification Plan*) or 15.4 (*Agreement of the Rectification Plan*);
- (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clauses 15.4.1 and 15.4.2 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 15.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) where a Notifiable Default has occurred in relation to Clause 15.1(b), a Service Level Failure re-occurring in respect of the same Service Level for the same (or substantially the same) root cause in any of the 3 Months subsequent to the Month in which the Notifiable Default occurred;

following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process” means the process set out in Clauses 15.3 (Submission of the draft Rectification Plan) to 15.4 (Agreement of the Rectification Plan);

“Redundancy Costs” means the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:

- (a) any statutory redundancy payment; and

in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual

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benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;

“Register” has the meaning given to it in paragraph 2.1(a) of Schedule 8.3 (Exit Management);

“Regulations” means the Public Contracts Regulations 2015 and/or any successor legislation in force from time to time;

"Regulatory Bodies" (e) means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and/or Authority, and **“Regulatory Body”** shall be construed accordingly;

“Related Supplier” means any Third Party who provides services to the Authority in relation to this Agreement from time to time;

“Related Third Party” means a party to:

- (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or
- (b) a Sub-contract;

“Release” has the meaning set out in ITIL v3 (2011);

“Release and Deployment Management” has the meaning set out in ITIL v3 (2011);

“Release Assurance Operating Model” means the Authority process for the operation of Release and Deployment Management;

“Relevant IPR” means IPRs 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 Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs

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"Relevant Period"	means: (a) each financial year of the Guarantor; and (b) each period beginning on the first day of the second half of a financial year of the Guarantor and ending on the last day of the first half of its next financial year;
"Relevant Requirements"	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, a tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	(b) means a transfer of employment to which the Employment Regulations apply or are treated as applying;
"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 13.3.2;
"Repair Loop"	means the mechanism or process, operated by the Supplier, by which faulty equipment removed from a Charging Location is returned, repaired (or demonstrated to be beyond economical repair to the Authority's satisfaction) and either re-introduced into the Spares Pool or is destroyed;
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Goods and Services following the expiry or termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
"Replacement Supplier"	means any Third Party service provider of Replacement Services appointed by the Authority from time to time;
"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);
"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

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	request for such information under the FOIA or the Environmental Information Regulations;
“Request Fulfilment Operating Model”	means the Authority process for the operation of Request Management;
“Request Management”	has the meaning set out in ITIL v3 (2011);
“Required Action”	has the meaning given to it in Clause 38.4.1(a);
“Requirements”	means the requirements as set out in Schedule 2.1 (Services Description), and “Requirement” shall be taken to mean any one of them;
“Resolution”	means an action taken to repair the root cause of an Incident or Problem, or to implement a workaround.;
“Resolution Process”	has the meaning set out in ISO/IEC 20000;
“Resolution Time”	has the elapsed time taken from the point at which the Incident is logged on the Authority’s Service Management Toolset (including Service Incidents triggered by the Authority’s Event monitoring system), to the time that the Incident has successfully been set to Resolved on the Authority’s Service Management Toolset. For the purposes of Service Levels, a Service Incident shall be deemed to have been resolved once normal operation has been restored as defined in 2.1 Requirements.
“Resolved”	means, in relation to an Incident, the point at which the Service is deemed to have been restored or a viable work-around provided, prior to confirmation of closure by the end user;
“Review Meeting”	means the meetings described in Schedule 8.5 (Governance and Contract Management) and can refer to either a Service Review Meeting or a Contract Review Meeting as the context requires;
“RID” or “Radionuclide Identification Device” or “Radioactive Isotope Identification Device”	means an instrument that is designed to determine the identity isotopes of interest;
“Risk Level”	means: <ul style="list-style-type: none"> (a) Risk Level 1; (b) Risk Level 2; or Risk Level 3.

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“Risk Level 1”	means any of the circumstances set out in the second column of the table at Annex 1 (Adverse Financial Events) of Schedule 7.2 (Financial Distress) headed “1”;
“Risk Level 2”	means any of the circumstances set out in the third column of the table at Annex 1 (Adverse Financial Events) of Schedule 7.2 (Financial Distress) headed “2”;
“Risk Level 3”	means any of the circumstances set out in the fourth column of the table at Annex 1 (Adverse Financial Events) of Schedule 7.2 (Financial Distress) headed “3”;
“Risk Margin”	<p>means, at each Profit Share Assessment Point:</p> <p>(a) in relation to a Scheduled Profit Share Assessment Point, the Supplier’s acceptable margin of risk, as detailed in the [fourth] column of the table at Appendix 2 to Schedule 7.3 (Value for Money and Benchmarking); or</p> <p>where the circumstances described in paragraph 3.7 of Schedule 7.3 (Value for Money and Benchmarking) exist, the Supplier’s acceptable margin of risk at the Scheduled Profit Share Assessment Point that is closest in time to the date on which the Agreement is to terminate, as detailed in the [fourth] column of the table at Appendix 2 to Schedule 7.3 (Value for money and Benchmarking);</p>
“RL1 Follow Up Meeting”	(c) has the meaning given to it in paragraph 2.2.3 of Schedule 7.2 (Financial Distress);
“RL1 Meeting”	has the meaning given to it in paragraph 2.2.1 of Schedule 7.2 (Financial Distress);
“RL1 Resolution Notice”	has the meaning given to it in paragraph 2.2.5 of Schedule 7.2 (Financial Distress);
“RL2 Resolution Notice”	has the meaning given to it in paragraph 2.3.3 of Schedule 7.2 (Financial Distress);
“RL3 Resolution Notice”	has the meaning given to it in paragraph 2.4.5 of Schedule 7.2 (Financial Distress);
“RMADS”	means “Risk Management and Accreditation Document Set” as detailed in Schedule 2.4 (Security Management);
“Root Cause”	has the meaning set out in ITIL v3 (2011);
“RN”	means RadioNuclide;
“RN Detector”	means a device that can sense and make notification of the presence of radiological and nuclear materials;

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“RN Detection Estate”	means the entirety of all RN Detection equipment across all sites.
“RN Detection ICT”	means that information and communications technology that is essential to the functioning of the Fixed RN Detectors and is either incorporated within the Fixed RN Detectors or is connected to the Fixed RN Detectors directly or via a local area;
“RN Source”	means a known quantity of a radionuclide which emits ionizing radiation.
“RSE”	means road side enclosure;
“Scheduled Profit Share Assessment Point”	means the point in time at which a Profit Share Assessment is scheduled to be carried out, as detailed in the second column of the table at Appendix 2 of Schedule 7.3 (Value for Money and Benchmarking);
“Screening”	means the act of using a RN Detector to determine the presence of radiological and nuclear materials;
“Second-Level Support” or “Second-Line support”	has the meaning set out in ITIL v3 (2011);
“Security”	means, a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
“Security Aspects Letter”	means the security aspects letter issued by the Authority to the Supplier, the form of which is set out in Annex 2 of Schedule 2.4 (Security Management);
“Security Incident”	means an Incident that occurs as a result of the Baseline Security Requirement not being Achieved;
“Security Incident Management”	means the management of any breach to security as defined in ITIL v3 (2011)
“Security Management”	has the meaning set out in ITIL v3 (2011);
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to Schedule 2.4 (Security Management) as updated from time to time;
"Security Policy"	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division) as updated from time to time;
"Security Policy Framework" or “SPF”	means the HMG Security Policy Framework, available at https://www.gov.uk/government/publications/security-policy-

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[framework](#);

“Security Representative”	means the Authority Security Representative and the Supplier Security Representative, each appointed in accordance with paragraph 1.2 of Schedule 2.4 (Security Management);
“Security Risk”	means a situation which poses a possible threat to the security of the Authority and/or the systems and/or operations it performs. Information security risk is associated with the potential that threats will exploit vulnerabilities of information assets and thereby cause harm to an organisation.
“Security Tests”	means tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security;
“Service Acceptance Test”	means the test to be developed between the Supplier and the Authority in accordance with Schedule 6.2 (Testing);
“Service Asset and Config Operating Model”	means the Authority process for the operation of Service Asset and Configuration Management;
“Service Asset and Configuration Management”	has the meaning set out in ITIL v3 (2011);
“Service Capacity Management”	has the meaning set out in ITIL v3 (2011);
“Service Catalogue”	has the meaning set out in ITIL v3 (2011);
“Service Catalogue Management”	has the meaning set out in ITIL v3 (2011)
“Service Charge Expiration Event”	means, in relation to each Fixed Service Charge, the event that stops the accrual of the relevant Fixed Service Charge, as set out in the seventh column headed “Service Charge Expiration Event” of Table 1 (Fixed Service Charges) in Annex 1 to Schedule 7.1 (Contract Charges).
“Service Charge Trigger Event”	<p>means:</p> <p>(a) in relation to each Fixed Service Charge, the event that triggers the accrual of the relevant Fixed Service Charge, as set out in the sixth column headed “Service Charge Trigger Event” of Table 1 (Fixed Service Charges) in Annex 1 to Schedule 7.1 (Contract Charges); or</p> <p>in relation to each Implementation Service Charge, the event which triggers payment of the relevant Implementation Service Charge, as set out in the sixth column headed “Service Charge</p>

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Trigger Event” of Table 2 (Implementation Service Charges) in Annex 1 to Schedule 7.1 (Contract Charges);

“Service Charges” means the prices (exclusive of any applicable VAT), payable to the Supplier by the Authority under this Agreement, as set out in Schedule 7.1 (Contract Charges), for the full and proper performance by the Supplier of the Services under this Agreement;

“Service Commencement Date” means the Milestone Date for Milestone 4 as stated in Annex 1 to Schedule 6.1 (Implementation Plan), which is 1st April 2020;

“Service Continuity Management” has the same meaning as IT Service Continuity management as set out in ITIL v3 (2011);

“Service Continuity Plan” has the same meaning as IT Service Continuity Management Plan as set out in ITIL v3 (2011);

“Service Credit” means a deduction to the Service Charges as a result of a Service Level Failure in a Month that accrue as a result of failures to deliver the Services to the required standards as set out in the table at Annex 1 to Part A of Schedule 2.2 (Performance).

“Service Credit Cap” has the meaning given to it in paragraph 6.1 of Schedule 2.2 (Performance);

“Service Credit Percentage” means, in relation to:

- (a) Service Level 1 (Failure to Agree Responsibility for Service Level Failure);
- (b) Service Level 7 (Change);
- (c) Service Level 9 (Security Incidents occurring owing to inappropriate use of Authority Confidential Information or the System);
- (d) Service Level 10 (P1 & P2 Incident Reports); or
- (e) Service Level 12 (KPI Achievement),

the percentage indicated in the eighth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Credit”;

“Service Description” means a high level outline of what a service should encompass;

“Service Design” means a document(s) defining all aspects of the service and

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Package” or “SDP”	its requirements through each stage of its lifecycle;
“Service Failure”	means the loss of ability to operate to specification, or to deliver the required output. A Failure often causes an Incident. The performance thresholds utilised to determine the appropriate Service Failure criteria: Minor, Major, Severe;
“Service Go-Live”	means the commencement of live Services after the issuing of the Milestone Achievement Certificate for Milestone 4;
“Service Hours”	means the hours during which the Services must be available; i.e. 24 (twenty four) hours per day, 365 (three hundred and sixty five) (or 366 (three hundred and sixty six) during leap years) days per annum;
“Service Integrator”	is the Authority acting as the coordinator of the Supplier and Related Suppliers and encouraging the Supplier and the Related Suppliers to collaborate, innovate, and improve;
“Service Level”	means the service levels that indicate the minimum standards for delivery of the services set out in the table at Annex 1 to Part A of Schedule 2.2 (Performance);
“Service Level Achieved”	means the score achieved for each of the Service Levels that are measured on a Monthly basis, as set out in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Level Performance Measure”;
“Service Level Achievement Measure”	means the specified measure of the performance target that is applied to the Service Line;
“Service Level Description”	means the title given to the Service Level requirement ID;
"Service Level Failure"	means, in relation to each Service Level, the circumstances described as a “Service Level Failure” in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Level Performance Measure”;
“Service Level Management”	has the meaning set out in ITIL v3 (2011);
“Service Level Performance Criterion”	means the performance measures specified in the column titled ‘Service Level Performance Criterion’ in Table 1 of Annex 1 to Part A of schedule 2.2 (Performance);
“Service Level Requirement”	means the performance target utilised to measure the Supplier’s execution of the Service;
“Service Level Security Incident”	means a Breach of Security caused by the Supplier failing to meet its obligations to: <ul style="list-style-type: none"> (a) maintain the security of the RN Detection Equipment and/or the Local IT Infrastructure and/or any associated

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	applications and operating systems; or
	follow defined security processes and procedures as required in the Security Standards.
“Service Level Target”	means the target score for each Service Level detailed in the seventh column in the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed ‘Service Level Target’;
“Service Level Target Duration”	means, in relation to the Service Level for an Incident Priority Level, the target time for Resolution of an Incident of that Incident Priority Level, as set out in the sixth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Target”;
“Service Level Type”	means the Service Level that can be either ‘single’ or ‘shared’ as set out in Schedule 2.2 (Performance);
“Service Management”	means the services as described in Annex 5 of Schedule 2.1 (Service Description);
“Service Manager”	has the meaning and responsibility as specified in the Key Personnel table in Schedule 9.2 and is the person representing the Supplier identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);
“Service Measurement and Service Reporting”	(b) has the meaning set out in ITIL v3 (2011);
“Service Review Meeting”	the meeting described in paragraphs 6.2 and 8.6 to 8.9 (inclusive) of Schedule 8.5 (Governance and Contract Management), the terms of reference for which are set out in paragraphs 2 to 4 (inclusive) of Annex 1 to Schedule 8.5 (Governance and Contract Management);
“Service Period”	means the period commencing on the Service Commencement Date and expiring on: <p>(a) the Initial Term Expiry Date; or</p> <p>where the Term is extended in accordance with Clause 4.1(b), the Extension Term Expiry Date;</p>
“Service Readiness Review” or “SRR”	has the meaning as described in Annex 1 of Schedule 6.1 (Implementation Plan), the combined objective of Milestone 3, the deliverables of which are described in Annex 2 of Schedule 6.1 (Implementation Plan);
“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;

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“Service Transfer Date”	means the date of a Service Transfer;
“Service Validation and Testing”	has the meaning set out in ITIL v3 (2011);
"Services"	(c) means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>);
“Severity Level”	(b) means the level of severity of a Test Issue, the criteria for which are described in Annex 2 of Schedule 6.2 (Testing Procedures) defined as Severity Level 1 through to Severity Level 5 Test Issues;
“Shared Service Level”	means a Service Level under this Agreement that is common between this Agreement and any Other Supplier Contract, and which has a single definition which is used across both contracts, and is designated as “Shared” in the column headed ‘Service Level Type’ in the table at Annex 1 to Part A of Schedule 2.2 (Performance);
“Shared Service Level Supplier”	means any Related Supplier appointed by the Authority which has Shared Service Levels with the Supplier;
“Shared Service Level Target”	means the value specified in the column ‘Service Level Target’ in table 1 in Annex A to Part 1 of Schedule 2.2 Performance, where the Service Level Type is ‘Shared’
“Shortfall Period”	has the meaning given in Paragraph 5.2 of Schedule 7.5 (Payments on Termination);
“Site”	means one or more areas within a Port where RN Detectors are operated;
“Site Incidents”	has the meaning given to it in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed ‘Service Level Performance Measure’ in the row for Service Level 10 (Availability);
“Site Incident Duration”	has the meaning given to it in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Level Performance Measure” in the row for Service Level 10 (Availability);
“Site Lanes”	has the meaning given to it in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Level Performance Measure” in the row for Service Level 10 (Availability);
“Site Planned Outage”	means, in relation to Service Level 11 (Availability), the cumulative permitted duration in hours and minutes during which maintenance at a Site will occur and the Lanes will not be available during a Month, as agreed in writing between the Authority and the Supplier in advance of the relevant Month;

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“Site Service Availability”	means, in relation to Service Level 11 (Availability), the availability achieved for each Charging Location, calculated in accordance with the formula set out in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Level Performance Measure”;
“Site Service Level Achieved”	means, in relation to Service Level 11 (Availability), the availability achieved for each Site, calculated in accordance with the formula set out in the fifth column of the table at Annex 1 to Part A of Schedule 2.2 (Performance) headed “Service Level Performance Measure”;
“SLA Delta”	<p>means, in relation to the calculation of Service Credits for Service Level 10 (Availability), the difference between the maximum score for availability (100%) and the Service Level Target for Service Level 11 (Availability), calculated in accordance with the following formula:</p> $SLAD = 100\% - SLT$ <p>Where:</p> <p>SLAD = Service Level Data; and</p> <p>SLT = the Service Level Target for Service Level 10 (Availability);</p>
“SME”	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
“SME Management Information Report”	has the meaning given to it in paragraph 4.1 of Schedule 2.6 (Sustainability and CSR);
"Software"	means the Supplier Software and Authority Software;
“Software Asset Management”	has the meaning set out in ITIL v3 (2011);
“Software Supporting Materials”	has the meaning given in Clause 24.2.1 (<i>Specially Written Software and Project Specific IPRs</i>);
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;
"Source Continuity Management"	has the meaning set out in ITIL v3 (2011);

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"Source Management"	has the meaning set out in ITIL v3 (2011);
"Spares"	means all spare parts used by the Supplier required to the deliver the Services in accordance with Clause 5 (Supply of Services);
"Spares and Consumables"	means all spare parts or components relating to the RN Detectors or Local IT Infrastructure used by the Supplier to provide the Services in accordance with Clause 5 (Supply of Services);
"Spares Management"	means the ongoing maintenance and management of the Spares Pool to ensure spare items are fit for purpose and available for use in meeting the support requirements within this contract;
"Spares Pool"	means the pool of Spares that is kept and maintained by the Supplier in accordance with requirement RNMC SC3 of Annex 3 (Spares and Consumables) to Schedule 2.1 (Services Description);
"Specially Written Software"	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;
"Staff Vetting Procedures"	means the Authority's procedures and departmental policies for the vetting of staff as set out the Baseline Security Requirements;
"Staffing Information"	<p>means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement and gender; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries and profit sharing arrangements as

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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

any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Staff Transfer”

means the process of transferring staff in accordance with a Service Transfer;

“Standard Change”

means a type of Operational Change that is recurrent, well known, has been proceduralized to follow a pre-defined and is the accepted response to a specific requirement or set of circumstances, where authority is effectively given in advance of implementation;

“Step-in Notice”

has the meaning given to it in Clause 38.4.1;

“Step-In Trigger Event”

means:

- (a) any event falling within the definition of a Supplier Termination Event;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 30 (Step-In Rights) is necessary;

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- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or

a need by the Authority to take action to discharge a statutory duty;

“Step-out Date”

has the meaning given to it in Clause 38.4.5(b);

“Step-out Notice”

has the meaning given to it in Clause 38.4.5;

“Step-out Plan”

has the meaning given to it in Clause 38.4.6;

"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 Goods and Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and Services or any part thereof or necessary for the management, direction or control of the Goods and Services or any part thereof;

"Sub-contractor"

means the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;

“Sub-processor”

means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement;

"Supplier Action Plan"

- (f) means a document capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance

“Supplier Background IPRs”

means:

- (a) Intellectual Property Rights owned by the Supplier before the Effective 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
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier

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subsisting in the Supplier Software;

“Supplier Commercial Manager”	means the person representing the Supplier identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);
"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
“Supplier COTS Background IPRs”	<p>means any embodiments of Supplier Background IPRs that;</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease, or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier COTS Software”	<p>means the Supplier Software (including Open Source Software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>has a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;</p>
“Supplier Dosimeter”	means a device (used to measure an absorbed dose of ionizing radiation) that is used by a suppliers staff and/or contractors.
“Supplier's Final Supplier Personnel List”	means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
“Supplier Management”	has the meaning set out in ITIL v3 (2011);
“Supplier Non- COTS Background IPRs”	means any embodiments of Supplier Background IPRs that has been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS	means Supplier Software that is not Supplier COTS Software;

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Software”

“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 Profit”	means in relation to a period or a Milestone (as the context requires), the difference between the total Contract 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 Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier's Proposals"	has the meaning set out in paragraph 5.3(c) of Schedule 8.4 (Business Continuity and Disaster Recovery);
“Supplier's Provisional Supplier Personnel List”	means 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;
“Supplier Representative”	has the meaning and responsibility as specified in the Key Personnel table in Schedule 9.2 and the person representing the Supplier identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);
“Supplier Security Representative”	means the individual appointed by the Supplier under paragraph 1.2 of Schedule 2.4 (Security Management) with overall responsibility for security under this Agreement;
“Supplier Request”	means a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Party Dispute Resolution Procedure in respect of that Dispute.
“Supplier Service Desk”	means any provision that a supplier may use in order to allocate Incidents, Problems, Operational Changes etc. to its resolver groups.
"Supplier Software"	means the software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Goods and Services, including the software specified as such in Schedule 5 (<i>Software</i>);

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"Supplier Solution"	means the Supplier's solution for the provision of the Goods and Services as set out in Schedule 4.1 (Supplier Solution);
"Supplier Surge Response Plan"	means the activity that the Supplier will perform in order to respond to the invocation of Surge.
"Supplier System"	means the information and communications technology system used by the Supplier in performing the Services including the Software, the Equipment and related cabling (but excluding the Authority System);
"Supplier Termination Event"	<p>means:</p> <ul style="list-style-type: none"> (a) the Supplier's level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable; (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 34.2.1(a) (<i>Financial Limits</i>); (d) a Rectification Plan Failure; (e) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> (i) Clause 26 (<i>IPRs Indemnity</i>); and/or (ii) Clause 43(b) (<i>Prevention of Fraud and Bribery</i>); (f) the representation and warranty given by the Supplier pursuant to Clause 33.1.9 (<i>Warranties</i>) being materially untrue or misleading; (g) the Supplier committing a material Default under any of the following Clauses: <ul style="list-style-type: none"> (i) Clause 5.4 (<i>Services</i>); (ii) Clause 28 (<i>Protection of Personal Data</i>); (iii) Clause 31 (<i>Freedom of Information</i>); (iv) Clause 29 (<i>Confidentiality</i>); (v) Clause 45 (<i>Discrimination</i>); (vi) Clause 41 (<i>Health and Safety</i>); and

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- (vii) Clause 30 (*Official Secrets and Finance Act*); and/or
- (viii) in respect of any security requirements set out in Schedule 2.1 (Services Description), Schedule 2.4 (Security Management) or the Baseline Security Requirements; and/or
- (ix) in respect of any requirements set out in Schedule 9.1 (Staff Transfer);
- (h) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (*Benchmarking*);
- (i) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (j) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (k) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
- (l) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.6 (*Appointment of Key Sub-contractors*);
- (m) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (*Staff Transfer*);
- (n) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or

a failure by the Supplier to comply in the performance of the

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Services with legal obligations in the fields of environmental, social or labour law.

“Surge”	means the process to enable Border Force to immediately engage resources from a Surge Rapid Response Team (SRRT) provided from departments such as HMRC and the MoD after the identification of a validated RN threat;
“Sustainability Plan”	has the meaning given to it in paragraph 2.1 of Schedule 2.6 (Sustainability and Corporate Social Responsibility);
“Sustainability Policy”	has the meaning given to it in paragraph 2.1 of Schedule 2.6 (Sustainability and Corporate Social Responsibility);
“Sustainability Report”	has the meaning given to it in paragraph 5.2 of Schedule 2.6 (Sustainability and Corporate Social Responsibility);
"Standards"	means the Quality Standards and the standards described in Schedule 2.3 (Standards);
“System”	means jointly the Fixed RN Detectors; the RN Detection ICT and the Local ICT; and may also include the Central IT Platform when referring to the system as a whole;
“System and Application Access Control”	shall mean the obligations and conditions for accessing the Authority’s information assets as described in paragraph 6 of Annex 1 of Schedule 2.4 (Security Management);
“TAR/N” or “TA(R/N)” or “TARN”	(o) means technical advisor radiological / nuclear;
“Tax”	means, any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or delay in paying any of the same).
“Technical Manager”	is the person representing the Supplier identified in the table at paragraph 4 of Annex 1 of Schedule 8.5 (Governance and Contract Management);
"Tender"	means the tender submitted by the Supplier to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Services;
"Term"	means the period from the Effective Date to: (a) the expiry of this Agreement by effluxion of time; or such earlier date of termination or partial termination of this Agreement in accordance with Law or the provisions of this Agreement;

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“Termination Date”	means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Estimate”	has the meaning given in paragraph 10 of Schedule 7.5 (Payments on Termination);
“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;
“Termination Payment”	means, where the Services are terminated without cause under Clause 38.1(a), the payment to be made by the Authority to the Supplier in accordance with the provisions of Schedule 7.5 (Payments on Termination);
“Test”	means either: <ul style="list-style-type: none"> (a) a test carried out pursuant to the provisions of Schedule 6.2 (Testing Procedure); or (b) the act of conducting a test in accordance with the provisions of Schedule 6.2 (Testing Procedure), and “Tested” and “Testing” shall be construed accordingly;
“Test Certificate”	means a certificate materially in the form of the document contained in Annex 1 of Schedule 6.2 (Testing Procedures) issued by the Authority when a Milestone has satisfied its 1relevant Test Success Criteria;
“Test Issue Management Log”	means a log that the Supplier shall keep containing all Test Issues relevant to a Test;
“Test Issue Threshold”	(b) 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 Test Plan;
“Test Issues”	means any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Plan”	means a test plan setting out the Supplier’s approach to Achieving each Test developed by the Supplier in accordance with the provisions of paragraph 4 of Schedule 6.2 (Testing Procedures);
“Test Report”	means a report that confirms the process and outcome of a Test that is performed in accordance with the requirements as set out in Schedule 6.2 (Testing Procedures);

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“Test Specification”	means a test specification setting out the Supplier’s detailed approach to Achieving each Test in relation to the relevant Test Plan developed by the Supplier in accordance with the provisions of paragraph 6 of Schedule 6.2 (Testing Procedure);
“Test Strategy”	means the test strategy outlining the Supplier’s approach to achieving all of the Tests required under this Agreement developed by the Supplier pursuant to paragraph 3 of Schedule 6.2 (Testing Procedures);
“Test Success Criteria”	means the criteria for Achieving a Test as set out in paragraph 5 of Schedule 6.2 (Testing Procedures);
“Test Witness”	means a representative of the Authority who witnesses a test pursuant to the provisions of paragraph 7.3 of Schedule 6.2 (Testing Procedures);
“Testing Quality Audit”	has the meaning given to it in paragraph 9.1 of Schedule 6.2 (Testing Procedures);
“Third-Level Support” or “Third Line Support”	has the meaning set out in ITIL v3 (2011);
“Third Party Contract”	means a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services as set out in Schedule 4.4 (Third Party Contracts);
“Third Party COTS IPRs”	<p>means Third Party IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>has a Non-trivial Customer Base;</p>
“Third Party COTS Software”	<p>means Third Party Software (including Open Source Software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>has a Non-trivial Customer Base;</p>
“Third Party Non-COTS IPRs”	means Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	means Third Party Software that is not Third Party COTS Software;

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“Threshold Margin”

means, at each Profit Share Assessment Point:

- (a) in relation to a Scheduled Profit Share Assessment Point, the Profit Margin less the Risk Margin for that Scheduled Profit Share Assessment Point, as detailed in the fifth column of the table at Appendix 2 to Schedule 7.3 (Value for Money and Benchmarking); or

where the circumstances described in paragraph 3.7 of Schedule 7.3 (Value for Money and Benchmarking) exist, the Profit Margin less the Risk Margin at the Scheduled Profit Share Assessment Point that is closest in time to the date on which the Agreement Terminates, as detailed in the fifth column of the table at Appendix 2 to Schedule 7.3 (Value for Money and Benchmarking);

“Threshold Profit”

means, at each Profit Share Assessment Point, the amount in pounds and pence that the Supplier’s profit would have to be to meet the Threshold Margin exactly, calculated in accordance with the following formula:

$$TP = AR \times TM$$

Where:

TP = Threshold Profit;

AR = the Actual Revenue at the Profit Share Assessment Point; and

TM = the Threshold Margin for the relevant Profit Share Assessment Point;

“Total Accumulated Turnover”

means the Contract Charges set out in the invoices raised by the Supplier in the relevant Profit Share Period(s) and agreed by the Authority as due and payable for the relevant Profit Share Period(s) and any Profit Share arrangements with Sub-contractors in the relevant period(s);

“Total Costs Incurred”

the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Contract Charges) less any Deductions up to (and including) the Termination Date;

“Total Debt”

means, as at any particular time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of the Financial Indebtedness of members of the Group (other than any indebtedness referred to in paragraph (g) of the definition of Financial Indebtedness and any guarantee given by any member of the Group). For this purpose, any amount outstanding or repayable in a currency other than pounds

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sterling shall on that day be taken into account in its pounds sterling equivalent at the rate of exchange that would have been used had an audited consolidated balance sheet of the Group been prepared as at that day in accordance with GAAP;

“Transferrable Assets”

(b) means those of the Assets which are capable of legal transfer to the Authority;

“Transferrable Contracts”

(b) means the Sub-contracts, licences for Supplier Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant documentation;

“Transferring Assets”

has the meaning given to it in paragraph 8.3(a) of Schedule 8.3 (Exit Management);

“Transferring Authority Employees”

means those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Contracts”

(b) has the meaning given to it in paragraph 8.3(c) of Schedule 8.3 (Exit Management);

“Transferring Former Supplier Employees”

means, in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

“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;

“Transition”

means the transfer of services from:

(a) a Former Supplier to the Supplier; or

the Supplier to one or more Replacement Suppliers;

“Transition Planning and Support”

has the meaning set out in ITIL v3 (2011);

“Unauthorised Change”

means a change implemented by the Supplier without the Authority's approval;

“Underage”

means, at a Profit Share Assessment Point where the Earned Profit is less than the Threshold Margin, the sum by which the Actual Profit is under the Threshold Profit in accordance with the following formula:

$$U = TP - AP$$

Where:

U = Underage;

TP = the Threshold Profit at the relevant Profit Share

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Assessment Point; and
AP = the Actual Profit at the relevant Profit Share Assessment Point;

“Unique Service Level Service Credit”	means a Service Credit in relation to a Unique Service Level;
“Unique Service Level Suppliers”	has the meaning given to it in paragraph 3.1.(b) of Schedule 2.2 Performance;
“Unique Service Level Target”	means the value specified in the column ‘Service Level Target’ in table 1 in Annex A to Part 1 of Schedule 2.2 Performance, where the Service Level Type is ‘Unique’;
“Unplanned Outage”	means a period where Screening is not available at one or more Lanes at a Charging Location excluding periods of Planned Unavailability;
“Unrecovered Costs”	<p>means the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) that are:</p> <p>(a) actually incurred at the Termination Date;</p> <p>(b) unavoidable;</p> <p>(c) incurred for the purpose of delivering the Services; and</p> <p>(d) evidenced through the Open Book Accounts, to the extent that the same remain at the Termination Date to be recovered through Contract Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Contract Charges) as such Costs and Contract Charges are forecasted in the Financial Model;</p>
“Unrecovered Payment”	<p>means an amount equal to the lower of:</p> <p>(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and</p> <p>the amount specified in Paragraph 3 of Schedule 7.5 (Payments on Termination); and</p>
“Unrecovered Profit”	means the amount calculated in accordance with the following formula:

$$UP = (TCI \times ACLPM) - PAP$$

Where:

UP = Unrecovered Profit;

TCI = the Total Costs Incurred at the Termination Date;

ACLPM = the Anticipated Contract Life Profit Margin; and

(b) PAP = Profit Already Paid;

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“Update”	has the meaning given to it in Clause 52.8.2;
“Update Impact Assessment”	has the meaning given to it in Clause 52.8.3;
“Update Impact Assessment Acceptance Notice”	has the meaning given to it in Clause 52.8.8;
“Update Impact Assessment Rejection Notice”	has the meaning given to it in Clause 52.8.6;
“Upper Quartile”	means the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service;
“Use”	means, in relation to IPRs, 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 those IPRs;
“User”	means the end user that uses any component of the system;
“User Access”	means the method by which a user can access the system and is granted by the Authority;
“USP”	means unique selling point;
"Valid Invoice"	means an invoice issued by the Supplier to the Authority that complies with Part C to Schedule 7.1 (Contract Charges);
“Value For Money (VFM)”	means Value for Money (VFM) as per Schedule 7.3 (Value for Money and Benchmarking);
"Variation"	has the meaning given to it in Clause 52.1.1 (Variation);
“Variation Form”	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Schedule 8.1 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 52 (Variation) for varying this Agreement but excluding Clause 52.8 (Updates to the Policies and Processes of HODDaT and Clause 52.9 (Operational Change);
“Variation Request”	means a request made by either Party for a Variation;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“VSCE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.
“Warranty”	means a promise or guarantee that the Service will meet its agreed requirements and as derived from the positive effect of

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being available when needed, in sufficient capacity, and dependably in terms of continuity and security;

"Working Day"

means any day other than a Saturday or Sunday or public holiday in England and Wales.