

Schedule 4B

LEASE AGREEMENT

SO14594 - Provision of 2 X Black & White Copiers

Police Service of Northern Ireland (PSNI)

- and –

Xerox (UK) Ltd

AGREEMENT

relating to

**THE PROVISION OF LEASED GOODS AND/OR SERVICES RELATING TO
MULTIFUNCTIONAL DEVICES AND SERVICES, MANAGED PRINT SERVICES AND
PRINT AUDIT SERVICES**

CONTRACT REF

SO14594

FRAMEWORK SCHEDULE 4B

ORDER FORM AND LEASE AGREEMENT TERMS

Part 1 - Order Form

This Order Form is issued subject to the provisions of the framework agreement entered into between the Authority and the Supplier on 05th November 2015 ("**Framework Agreement**"). The Supplier agrees to supply the goods and/or services specified below on and subject to the terms of this Lease Agreement and for the avoidance of doubt the Lease Agreement consists of the terms set out in this Order Form and the Lease Agreement Terms, together with the schedules thereto.

Date	05th November 2015	Order Number	SO14594 - PO to be confirm by PSNI To be quoted on all correspondence relating to this Order
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FROM

Customer	Police Service of Northern Ireland (PSNI)		"Customer"
Customer's Address	PSNI, [REDACTED]		
Invoice Address	Police Service of Northern Ireland. [REDACTED]		
Contact Ref:	Name: [REDACTED] Address: [REDACTED] 9LD Phone: [REDACTED] e-mail: [REDACTED]		

TO

Supplier	Xerox (UK) Ltd		"Supplier"
Supplier's Address	Xerox UK Ltd, [REDACTED]		
Account Manager	Name: [REDACTED] Address: [REDACTED] Phone: [REDACTED] e-mail: [REDACTED]		

1. TERM

(1.1) Commencement Date

30th December 2015

(1.2) Expiry Date

1.2.1 This Lease Agreement shall expire on:

1.2.1 29th December 2020 or

1.2.2 seven (7) years after the date hereof;

whichever is the earlier, unless terminated earlier pursuant to this Lease Agreement.

Subject to earlier termination of the Lease Agreement in accordance with clause 27, the Lease Agreement shall expire on the Expiry Date provided.

2. LEASED GOODS AND SERVICES REQUIREMENTS**(2.1) Services and Deliverables required**

Enter x against the relevant service/deliverables required.

	The contract value shall be [REDACTED]
	5 Year Photocopier Lease Services
	Optional Services – provide details below

Details of any other Optional Services required by the Customer:

N/A

Services – Maintenance shall be provided as per Clause '5.5 MAINTENANCE, SUPPORT, TRAINING and PERFORMANCE' of the RM1599 Lot 2 master framework.

Deliverables – Xerox (UK) Ltd agrees to provide a 5 year (60 month) lease of two Xerox Copiers / Printers.

Xerox (UK) Ltd agrees to meet in full the requirements set out in Appendix B of the Invitation to Tender.

The cost to the customer shall be as per the below pricing table submitted by Xerox (UK) Ltd in response to the ITT:

Cost per Copy (B&W)	Quarterly Rental (5 years)
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[REDACTED]

[REDACTED]

(2.2) Lots under which the above Goods and Services are being supplied:

RM1599 Lot 2

(2.3) Title to Leased Goods

Title to Leased Goods remains with the Supplier in accordance with clause 7.5.

(2.4) Performance/Delivery Location/Premises

PSNI Lisnasharragh, [REDACTED]

(2.5) Standards

Quality Standards

As per Framework Clause 5.11 - STANDARDS and SECURITY

Technical Standards

Details of technical standards can be found in schedule 13 of the Framework Agreement. Xerox (UK) Ltd agrees that the supplied devices will confirm to Energy Star Accreditation.

(2.6) Guarantee Period

Where Goods only are supplied by the Supplier the Guarantee Period shall be the period from and including the date of Delivery of the Goods to the date twelve (12) Months thereafter.

(2.7) Security Requirements (including details of the outline security management plan and policy)

The customer's premises opening hours are 0800 to 1600, Monday-Friday. Supplier's staff will only be permitted onsite during these hours

Supplier's staff shall be escorted at all times whilst on the customer's premises.

Certain provisions dealing with security are included in schedule 2. Further clauses are set out in schedule [8] (Alternative and/or additional clauses). Include any clauses that are appropriate to the Customer or the location where the Goods/Services are being provided. Consider if there are any other specific security requirements relating to the Customer and include details.

(2.8) Disaster Recovery and Business Continuity

Set out in schedule [5]

(2.9) Disaster

Disaster means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of 10 working days or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period.

3. SUPPLIER SOLUTION

(3.1) Supplier Solution

- XEROX (UK) LTD AGREES TO MEET THE FOLLOWING REQUIREMENTS IN THE PROVISION OF THIS CONTRACT:**


- 1.1 Capacity to take a full range of paper – up to and including 250gsm coated and uncoated
- 1.2 Capacity to handle transparencies and labels
- 1.3 Capacity to handle waterproof and synthetic materials
- 1.4 Capacity to print SRA3 as standard
- 1.5 Capable of automatic print on stock up to 170gsm
- 1.6 Output of 110ppm
- 1.7 Output of 250,000+ per quarter
- 1.8 Document alignment guarantee of front to back registration
- 1.9 Resolution of 1200 x 1200 dpi

Both printers must include the following additional accessories and/functions:

- 1.10 Mixed media print set-up
- 1.11 Large capacity feeder tray
- 1.12 Duplex document feeder/scanner
- 1.13 Compatible with PC and MAC users and Xerox Free Flow Makeready
- 1.14 EX fiery external print server or equivalent to enable job building, queuing and imposing booklets from single page set up
- 1.15 Hardware/software - to include Fiery EFI compose and impose and Adobe Acrobat software suite
- 1.16 Post process document inserter
- 1.17 Booklet maker finisher
- 1.18 Folding/stapling/saddle stitching
- 1.19 2 and 4 hole punch

2. ADDITIONAL DETAILS

- 2.1 The machine must be functional from 30th December 20105; the 'switch on' date specified in Clause 3.3 of Appendix B.
- 2.2 Future upgrades to software and future patches must be provided to the customer when available.
- 2.3 The machines must be compatible with the operating functions owned by the tenderer, IE: The PC, Monitor, keyboard configuration.

2.4	Training shall be provided by the winning Supplier for 7 DFPNI employees at no additional cost to the customer. This must take place either on or before the 'switch on' date of 30th December 2015.
2.5	Xerox (UK) Ltd agreed to provide these services as per the pricing schedule presented in Appendix E of Xerox (UK) LTD's response to the ITT.
(3.2) Key Personnel of the Supplier to be involved in the provision of the Goods, Services and Deliverables	
	
[(3.3) TUPE: Transfer of Employees	
N/A	
(3.4) Sub-contractors to be involved in the provision of the Goods, Services and Deliverables	
[N/A	
(3.5) Security Management Plan	
Set out in schedule 2	
(3.6) Relevant Convictions	
N/A	
(3.7) Training	
Training shall be provided by Xerox (UK) Ltd for 7 PSNI employees at no additional cost to the customer. This must take place either on or before the 'switch on' date of 30th December 2015.	
(3.8) Supplier's inspection of the Premises and Infrastructure	
N/A	

4. SOFTWARE

Relevant EFI (Fiery) software, including Adobe, which will be embedded in the PSNI devices, will be supplied on COTS Licence Terms and therefore in line with Silver Licence Terms.

			Applicable Terms				
Software	Supplier	Purpose	Gold Licence Terms	Silver Licence Terms	Bronze Licence Terms	COTS Licence Terms	Assigned Software Terms
Fiery Impose and Compose	Xerox (UK) Ltd	Support s device funtions		√			
Xerox Free Flow Makeready	Xerox (UK) Ltd	Support s device funtions		√			
Adobe Acrobat	Xerox (UK) Ltd	Support s device funtions		√			

5. PERFORMANCE OF THE GOODS, SERVICES AND DELIVERABLES**(5.1) Implementation Plan and Milestones (including dates for completion)**

(i) The Implementation Plan as at the Commencement Date is set out below:

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)	Delay Payments
Delivery Date	Xerox (UK) Ltd must make delivery of the devices on or prior to [REDACTED]	1	[REDACTED]	Ensure Supplier access to the premises.	N/A
'Switch On' Date	The machine must be functional from [REDACTED] the 'switch on' date	1	[REDACTED]	Ensure Supplier access to the premises if required.	N/A

- (ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services and/or provision of the Goods.
- (iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- (iv) The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- (vi) If a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Authority Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Authority provides the Supplier with a Milestone Achievement Certificate.

- (vii) No payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this paragraph 5.1 of this Order or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Delay Payments.

(5.2) Testing

Set out in schedule 4

(5.3) Service Levels and Service Credits

Service Levels:

Set out in schedule 6

Service Credits:

Set out in schedule 6

(5.4) Critical Service Failure

Clause 7.19 provides the Customer with a right to terminate the Lease Agreement if a critical service failure occurs.

(5.5) Monitoring

The PSNI shall monitor the performance through periodic MI data requests. Review meetings shall be held to discuss the suppliers performance against the contract.

(5.6) Continuous Improvement, Value for Money and Benchmarking

- (i) The Customer shall regularly benchmark the Lease Agreement Charges and performance of the Goods and Services, against other suppliers providing goods and services substantially the same as the Goods and Services during the Lease Agreement Period in order to compare the Lease Agreement Charges and level of performance of the Services and delivery of the Goods with charges and service offered by third parties so as to provide the Customer with information for comparison purposes.
- (ii) The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in paragraph (i) above.
- (iii) The Customer shall be entitled to disclose the results of any benchmarking of the Lease Agreement Charges and provision of the Goods and Services to the Authority and other Contracting Bodies.
- (iv) The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking referred to in this paragraph 5.6, such information requirements to be at the discretion of the Customer.

6. CUSTOMER RESPONSIBILITIES

(6.1) Customer's Responsibilities

The customer shall provide Xerox (UK) Ltd access to the locations of the devices when appropriate and ensure supplier staff are escorted on site at all times.

(6.2) Customer's equipment

N/A

7. CHARGES AND PAYMENT

(7.1) Lease Agreement Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS)

Invoices shall be submitted by email to: [REDACTED] in xml or pdf format or in hard copy to Police Service of Northern Ireland. [REDACTED]

1. Quarterly in advance

(7.2) Invoicing and Payment

The Supplier shall issue invoices quarterly in advance for lease and arrears for copy charges. The Customer shall pay the Supplier within thirty (30) Working Days of receipt of a Valid Invoice, submitted in accordance with this paragraph 7.2, the payment profile set out in paragraph 7.1 above and the provisions of the Lease Agreement.

8. LIABILITY

Subject to the provisions of Clause 25 of the Call-Off Lease Agreement:

(8.1) [the annual aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other Party under or in connection with the Lease Agreement shall in no event exceed 125 per cent of the Lease Agreement Charges payable by the Customer to the Supplier during the Lease Agreement Period.

(8.2) The annual aggregate liability under the Lease Agreement for all Defaults shall in no event exceed 125 per cent of the Lease Agreement Charges payable by the Customer to the Supplier during the Lease Agreement Period.

9. INSURANCE

(9.1) Minimum Insurance Period

6 (six) years following the expiration or earlier termination of the Lease Agreement.

(9.2) To comply with its obligations under clause 26.2 and as a minimum, where requested by the Customer in writing the Supplier shall ensure that:

- (i) **professional indemnity insurance** is held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Goods and Services has a minimum limit of indemnity of [REDACTED] for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time;
- (ii) **public liability insurance** adequate to cover all risks in the performance of this Lease Agreement from time to time with a minimum limit of [REDACTED] for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time; and
- (iii) **employers' liability insurance** with a minimum limit of indemnity of such amount as may reasonably be required by Law from time to time.
- (iv) **product liability insurance** adequate to cover all risks in the performance of this Lease Agreement from time to time with a minimum limit of [REDACTED] for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time.

10. TERMINATION

(10.1) Undisputed Sums Time Period

At least ninety (90) Working Days of the date of the written notice specified in clause 27.4.3.

(10.2) Termination Without Cause

At least thirty (30) Working Days in accordance with clause 27.5.

11. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

N/A

12. AUDIT AND ACCESS

12 months after the expiry of the Lease Agreement Period or following termination of the Lease Agreement.

13. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

(13.1) Supplemental requirements in addition to Lease Agreement Terms

N/A

(13.2) Variations to the Lease Agreement Terms

As per Clause 41 of this Order form

(13.3) Alternative and/or Additional clauses (as set out in Schedule 9)

N/A

14. FORMATION OF LEASE AGREEMENT

(14.1) The Customer shall enter into a Lease Agreement by sending this Order Form to the Supplier for the provision of the Goods and Services referred to in the Order Form.

(14.2) The Supplier shall enter into the Lease Agreement by returning a signed copy of the Order Form to the Customer.

(14.3) The Lease Agreement shall be formed when the Customer acknowledges receipt of the signed copy of the Order Form.

15. DISPUTE RESOLUTION

(15.1) Level of Representative to whom disputes should be escalated to

Finance director or equivalent.

(15.2) Mediation Provider

Centre for Effective Dispute Resolution.

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

For and on behalf of the Supplier:

Name and Title		
Signature		
Date		

For and on behalf of the Customer:

Name and Title		
Signature		
Date		

Part 2 - Lease Agreement Terms

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THIS LEASE AGREEMENT IS MADE ON THE [] DAY OF [] 200[]

Lease Agreement Terms

BETWEEN

- (1) The Customer identified in the Order Form ("Customer"); and
- (2) The company identified in the Order Form (the "Supplier").

WHEREAS

- A. the Lords Commissioners of Her Majesty's Treasury as represented by the Government Procurement Service being a separate Trading Fund of Her Majesty's Treasury without separate legal personality ("the AUTHORITY") selected Framework Providers, including the Supplier, to provide Goods and/or Services;
- B. the Supplier undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number RM1599 dated [date] (the "Framework Agreement");
- C. the AUTHORITY established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies.
- D. the AUTHORITY and the Supplier agree that public sector bodies within the UK may enter into Lease Agreements under the Framework Agreement with the Supplier for the Supplier to supply Goods and/or Services;
- E. the Customer is granted rights by the AUTHORITY in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a Lease Agreement under the

Framework Agreement pursuant to an Order Form served by the Customer on the Supplier;

- F. the Customer served an Order Form for Goods and/or Services on the Supplier; and
- G. the Supplier confirmed its agreement to the terms of this Lease Agreement by its acceptance of the Order Form.

3. GENERAL PROVISIONS

3.1 Definitions

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

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with paragraph 5.1 of the Order Form and "Achieved" and "Achievement" shall be construed accordingly;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
Affected Party	means the party seeking to claim relief in respect of a Force Majeure;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
["Assigned Software Terms"]	means the terms set out in schedule 7 paragraph 5 that shall apply to all elements of Bronze Software;]
["Assigned Software"]	means software identified as such in paragraph 4 of the Order Form;]
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE (" Cabinet Office ") as represented by Government Procurement Service formerly Buying Solutions, trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the "Authority");

"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in paragraph 2.8 of the Order Form;
["Bronze Licence Terms"	means the terms set out in schedule 7 paragraph 1 that shall apply to all elements of Bronze Software;]
["Bronze Software"	means software identified as such in paragraph 4 of the Order Form;]
"Business Continuity Plan"	has the meaning set out in paragraph 1.2.2 of schedule 5 (Disaster Recovery and Business Continuity);
"Change in Law"	means any change in Law or policy which impacts on the supply of the Goods and Services and performance of the Lease Agreement Terms which comes into force after the Commencement Date [Customer's ability to be party to the Lease Agreement to such an extent that the Customer is not permitted to continue as a party to the Lease Agreement];
"Clearance"	means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;
"Commencement Date"	means the date set out in paragraph 1.1 of the Order Form;
"Commercially Sensitive Information"	<p>means the Confidential information listed in paragraph 11 of the Order Form (if any) comprising of a commercially sensitive information:</p> <p>relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
"Continuous Improvement Plan"	means a plan for improving the provision of Available Services and/or reducing the charges produced by the Supplier pursuant to schedule 7 of the Framework Agreement;
"Contracting Authority"	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Customer;

"Control"	Means control as defined in section [1124] [450] Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
["Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);]
["COTS Licence Terms"	means the terms set out in schedule 7 paragraph 4 that shall apply to all elements of COTS Software;]
["COTS Software"	means software identified as such in paragraph 4 of the Order Form;]
"Critical Service Failure"	shall have the meaning given in paragraph 5.4 of the Order Form;
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Customer"	means the customer(s) identified in the Order Form;
"Customer Data"	means: <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:<ul style="list-style-type: none">(i) are supplied to the Supplier by or on behalf of the Customer; or(ii) the Supplier is required to generate, process, store or transmit pursuant to this Lease Agreement; or(b) any Personal Data for which the Customer is the Data Controller;

"Customer Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Lease Agreement and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Customer's Premises"	the premises identified in paragraph 2.4 of the Order Form and which are to be made available for use by the Supplier for the provision of the Goods and Services on the terms set out in this Lease Agreement;
"Customer Responsibilities"	means the responsibilities of the Customer set out in paragraph 6.1 of the Order Form;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to the Lease Agreement;
["Customer Software"	means software which is owned by or licensed to the Customer, including Assigned Software and software which is or will be used by the Supplier for the purposes of providing the Goods and the Services but excluding the Supplier Software;]
["Customer System"	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Lease Agreement which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Goods and Services;]
"Customer's Confidential Information"	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Data Controller"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Processor"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Protection Legislation"	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information

	Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"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's Staff in connection with or in relation to the subject-matter of this Lease Agreement and in respect of which the Supplier is liable to the Customer;
"Deliverables"	means those deliverables listed in part 2.1 of the Order Form (if any);
"Delivery"	means the time at which the Goods and Services have been installed by the Supplier and the Customer has issued a Satisfaction Certificate in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
"Disaster"	shall have the meaning given in paragraph 2.9 of the Order Form;
"Disaster Recovery"	means the process of restoration of the Services by the provision of the Disaster Recovery Services;
"Disaster Recovery Plan"	means has the meaning set out in paragraph 1.2.3 of schedule 5 (Disaster Recovery and Business Continuity);
"Disaster Recovery Services"	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to schedule 5 (Disaster Recovery and Business Continuity);
"Disaster Recovery System"	means the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in clause 50.2;
"Documentation"	means the technical specifications, user manuals, operating manuals, operating manuals, process definitions and procedures and other documentation including designs relating to the Supplier Software;
"Employee Liabilities"	means all claims actions, proceedings, orders, demands, complains, investigations and any award, compensation, damages, tribunal awards, fine, loss, order, penalty,

disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments,
- (b) unlawful deduction of wages;
- (c) unfair, wrongful or constructive dismissal compensation;
- (d), compensation claims for sex, race or disability discrimination or discrimination on the grounds of religion, age, belief or sexual orientation or claims for equal pay;
- (e) compensation for less favourable treatment of part-time or agency workers;
- (f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date;
- (g) claims whether in tort, contract or statute or otherwise;
- (h) , any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);]

["Environmental Information Regulations"

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;]

"Equipment"

means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Lease Agreement which, for the avoidance of doubt does not include the Goods;

"Exit Plan"

has the meaning set out in clause 5.9;

"Expiry Date"

means the date set out in paragraph 1.2 of the Order Form;

["Fair Deal Employee"

means (a) the Transferring Customer Employees and (b) those Former Supplier Employees whose period of continuous employment commenced with and who originally transferred from employment with central or local government or a public sector employer pursuant to

	a Relevant Transfer under TUPE (or the predecessor legislation to TUPE), and who remain in employment relating to the provision of services to which that Relevant Transfer applied;]
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	<p>means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none">a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;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;e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;
"Framework Agreement"	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to the Lease Agreement Lease Agreement or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Customer;
"General Principles"	has the meaning set out in paragraph 1.2.1 of schedule 5 (Disaster Recovery and Business Continuity);

["Gold Licence Terms"	means the terms set out in schedule 7 paragraph 3 that shall apply to all elements of Gold Software;]
["Gold Software"	means software identified as such in paragraph 4 of the Order Form [together with all other software which is not listed in paragraph 4 of the Order Form but which is or will be used by the Supplier or any Sub-contractor for the purposes of providing the Services or is embedded in or forms part of the Goods and in respect of such other software is required to be licensed in order for the Customer to receive the benefit of and/or make use of the Goods and Services];]
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Goods and Services"	means the goods and services to be supplied as specified in paragraph 2.1 of the Order Form;
"Guarantee"	means the deed of guarantee set out in schedule 3;
"Guarantee Period"	means the period specified as such in paragraph 2.6 of the Order Form;
["Guarantor"	means the Supplier's parent company identified in the Order Form (if any);]
"Holding Company"	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
["ICT"	means information and communications technology;]
["ICT Environment"	means the Customer System and the Supplier System;]
"Implementation Plan"	means the plan referred to in paragraph 5.1 of the Order Form;
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights" or "IPRs"	means: <ul style="list-style-type: none">a) patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website addresses, trade or business names, rights in Know-How and moral rights and

other similar rights or obligations whether registerable or not;

- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

[ITT Response]	means the response submitted by the Supplier to the Invitation to Tender issued by the Authority on 25 November 2011.
"Key Personnel"	means the individuals (if any) identified in paragraph 3.2 of the Order Form;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;
"Lease Agreement Terms"	means these terms and conditions in respect of the leasing of the Goods and Services, together with the schedules hereto;
"Lease Agreement"	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Ordering Procedure) of the Framework Agreement;
"Leased Goods"	means the Goods to be leased to the Customer as specified in the Order Form.

"Lease Agreement Period"	means the period from the Commencement Date to: (a) the Expiry Date; or (b) such earlier date of termination or partial termination of the Lease Agreement in accordance with Law or the provisions of the Lease Agreement;
"Lease Agreement Charges"	means the prices (exclusive of any applicable VAT), including the Rental, payable to the Supplier by the Customer under the Lease Agreement, as set out in paragraph 7.1 of the Order Form, for the full and proper performance by the Supplier of its obligations under the Lease Agreement less any Service Credits;
"Management Information"	means the management information specified in Framework Schedule 8 (Management Information Requirements);
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Milestone"	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan;
"Minimum Insurance Period"	has the meaning given in paragraph 9.1 of the Order Form;
"Month"	means calendar month and "monthly" shall be interpreted accordingly;
"Material Breach"	means a material breach of this Lease Agreement and/or, breach by the Supplier of any of the following clauses: Clause 23 (Warranties and Representations), Clause 22.5 (Protection of Personal Data), Clause 22.7 (Official Secrets Acts 1911 to 1989), Clause 8 (Monitoring of Lease Agreement Performance), Clause 31 (Records and Audits

Access), Clause 34 (Transfer and Sub-Contracting), Clause 30 (Prevention of Bribery and Corruption), Clause 33 (Prevention of Fraud), Clause 9 (Continuous Improvement) shall be a material breach.

"Order"	means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement;
"Order Form"	means the form containing details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods and Services to be supplied;
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Supplier or the Customer and "Parties" shall mean both of them;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Premises"	means the location where the Leased Goods are to be supplied, as set out in paragraph 2.4 of the Order Form;
"Process"	has the meaning given to "processing" under the Data Protection Act 1998 (but shall include both manual and automatic processing) , and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	<p>means:</p> <ol style="list-style-type: none">1) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to:<ol style="list-style-type: none">a) induce that person to perform improperly a relevant function or activity; orb) reward that person for improper performance of a relevant function or activity; or2) committing any offence:

- a) under the Bribery Act 2010; or
- b) under legislation creating offences concerning fraudulent acts; or
- c) at common law concerning fraudulent acts relating to this Call-Off Agreement or any other contract with the Authority and/or Customer and/or any other Contracting Body; or
- d) defrauding, attempting to defraud or conspiring to defraud the Authority and/or the Customer any other Contracting Body.

"Project Specific IPRs"

means:

- (a) IPRs in the Services, Deliverables and/or Goods provided by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Lease Agreement and all updates and amendments of these items created during the Lease Agreement Period; and/or
- (b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Supplier (or by a third party on behalf of the Supplier) under the Lease Agreement,

including the rights in or to any database developed and supplied by the Supplier to the Customer in accordance with the terms of this Lease Agreement;

"Property"

means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with the Lease Agreement;

"Quality Standards"

means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in paragraph 2.5 of the Order Form) and any other applicable quality standards, Government codes of practice and guidance;

"Regulatory Bodies"

means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate,

	investigate, or influence the matters dealt with in the Lease Agreement or any other affairs of the Customer;
"Related Supplier "	means any person who provides services to the Customer which are related to the Services from time to time;
["Relevant Transfer Date"]	means the date upon which the Relevant Transfer takes place;
"Relevant Transfer"	means a transfer of employment to which TUPE applies or is treated as applying;]
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified in paragraph 3.6 of the Order Form;
"Rental"	means the periodic charges payable for the lease of the Lease Goods.
"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Customer from time to time;
"Replacement Service"	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Lease Agreement, whether those services are provided by the Customer internally and/or by any third party;
"Request for Information"	means a request for information or an apparent request relating to this Lease Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Residual Value of the Leased Goods"	means the estimated residual value of the Leased Goods at the end of the Term, as set out in the Order Form.
"Review Report"	has the meaning set out in paragraph 6 of schedule 5 (Disaster Recovery and Business Continuity);
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in the Appendix to schedule 4 granted by the Customer when the Supplier has Achieved a Milestone;

[“Second Generation Fair Deal Employee”	means any employee whose employment transfers under a Relevant Transfer from the Former Supplier to the Supplier on the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of [*** insert name of public sector pension scheme ***] immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Supplier, and (ii) had elected to transfer such pension rights from [*** insert name of public sector pension scheme ***] to the Former Supplier's Scheme;]
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 3 of schedule 2 an outline of which is set out in paragraph 2.7 of the Order Form as updated from time to time;
"Security Policy"	means the Customer's security policy set out in paragraph 2.7 of the Order Form, as updated from time to time;
"Service Credits"	means the sums referred to in paragraph 5.3 of the Order Form as being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to in paragraph 5.3 of the Order Form;
"Services"	means the services to be supplied as referred to in paragraph 2.1 of the Order Form;
["Silver Licence Terms"	means the terms set out in schedule 7 paragraph 2 that shall apply to all elements of Silver Software;
"Silver Software"	means software identified as such in paragraph 4 of the Order Form;]
"Sites"	means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services or where any part of the Supplier System is situated or where any physical interface with the Customer System takes place;
"Software"	means the Supplier Software and Customer Software;
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;]

"Staff"	means all persons employed by the Supplier and/or any Sub-contractor to perform its obligations under the Lease Agreement together with the Supplier's and/or any Sub-contractor's servants, consultants, agents, suppliers and sub-contractors used in the performance of its obligations under the Lease Agreement;
"Staff Vetting Procedures"	means the Customer's procedures and departmental policies for the vetting of personnel as set out in paragraph 2.10 of the Order Form;
"Sub-contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the 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;
"Supplier"	means the person, firm or company with whom the Customer enters into the Lease Agreement as identified in the Order Form;
"Supplier Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer of its obligations under the Lease Agreement and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;]
"Supplier's Proposals"	has the meaning set out in paragraph 6.3.3 of schedule 5 (Disaster Recovery and Business Continuity);
"Supplier Software"	means the Gold Software, Silver Software, Bronze Software and COTS Software;
"Supplier Solution"	means the Supplier's solution for the provision of the Goods and Services as referred to in paragraph 3.1 of the Order Form;
"Supplier System"	means the information and communications technology system used by the Supplier in performing the Services including the Software, the Equipment and related cabling (but excluding the Customer System);

"Supplier's Confidential 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;
"Technical Standards"	means the technical standards set out in paragraph 2.5 of the Order Form;
"Tender"	means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Goods and Services pursuant to the Framework Agreement;
"Tests" and "Testing"	means any tests required to be carried out pursuant to this Lease Agreement and as referred to in paragraph 5.2 of the Order Form;
"Test Issue"	means any variance or non-conformity of Goods, Services or Deliverables from its requirements as set out in the Lease Agreement;
"Test Plan"	means a plan for the Testing of the Goods, Services or Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of schedule 4;
"Test Strategy"	means a strategy for the conduct of Testing as described further in paragraph 3 of schedule 4;
["TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
"Transferring Supplier Employees"	means those employees of the Supplier to which TUPE will apply on the Service Transfer Date, and in respect of whom written notification has been given by the Supplier to the Customer before the Service Transfer Date;
"Transferring Customer Employees"	means those employees of the Customer to which TUPE will apply on the Relevant Transfer Date, and in respect of whom written notification has been given by the Customer to the Supplier before the Relevant Transfer Date;]
"Undisputed Sums Time Period"	has the meaning given in paragraph 10.1 of the Order Form;
["Use"	means:

- (a) with respect to Bronze Software, Silver Software and COTS Software, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that software; and
- (b) with respect to the Gold Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that software;]

"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with clause 15.2.2;
"Variation"	has the meaning given to it in clause 41.1;
"Variation Procedure"	means the procedure set out in clause 41;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

3.2 Interpretation

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

- 3.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 3.2.2 words importing the masculine include the feminine and the neuter;
- 3.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 3.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 3.2.5 the schedules form part of this Lease Agreement and shall have effect as if set out in full in the body of this Lease Agreement. Any reference to this Lease Agreement includes the schedules;
- 3.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any

subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 3.2.7 headings are included in the Lease Agreement for ease of reference only and shall not affect the interpretation or construction of the Lease Agreement;
- 3.2.8 references to “clauses” and “schedules” are, unless otherwise provided, references to the clauses of and schedules to this Lease Agreement. References to “paragraphs” are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;
- 3.2.9 terms or expressions contained in this Lease Agreement which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 3.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 3.2.11 in the event of and only to the extent of any conflict between the Order Form, the clauses of the Lease Agreement, any document referred to in the clauses of the Lease Agreement and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 3.2.11.1 the Framework Agreement;
 - 3.2.11.2 the clauses of the Lease Agreement;
 - 3.2.11.3 the Order Form; and
 - 3.2.11.4 any other document referred to in the clauses of the Lease Agreement.

4. DUE DILIGENCE

- 4.1 The Supplier acknowledges that it:
 - 4.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
 - 4.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
 - 4.1.3 has entered into this Lease Agreement in reliance on its own due diligence alone.

5. GUARANTEE

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

6. CONTRACT PERIOD

6.1 This Lease Agreement shall take effect on the Effective Date and shall either expire on:

6.1.1 the date specified in the Order Form; or

6.1.2 seven [7] years after the Effective Date.

whichever is the earlier, unless terminated earlier pursuant to clause 11 or 25.

[The Lease Agreement is for 4 years and the Customer retains an option to extend this Lease Agreement for a further three years. The Customer may exercise any such option by giving the Supplier notice of its intention to renew not less than three (3) Months prior to the date when this Lease Agreement would otherwise expire.]

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

7. SUPPLY OF LEASED GOODS AND SERVICES

7.1 Supply of Leased Goods and Services

7.1.1 The Supplier shall supply the Goods and Services in accordance with the Implementation Plan.

7.1.2 The Supplier shall supply the Goods and Services during the Lease Agreement Period in accordance with the Customer's requirements as set out in the Lease Agreement in consideration for the payment of the Lease Agreement Charges. The Customer may inspect and examine the manner in which the Supplier supplies the Goods and Services at the Premises during normal business hours on reasonable notice.

7.1.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Goods and Services does not meet the requirements of the Lease Agreement or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Goods and Services in accordance with the requirements of the Lease Agreement within such reasonable time as may be specified by the Customer.

7.1.4 The Supplier accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:

7.1.4.1 the same is notified in writing to the Supplier within three (3) Working Days of receipt of the Ordered Goods by the Customer; and

7.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Supplier's instructions.

7.1.5 Where the Supplier accepts responsibility under clause 5.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit.

7.1.6 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and Services and the performance of its obligations under the Lease Agreement.

7.2 Provision and Removal of Equipment

7.2.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Goods and/or the Services.

7.2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.

7.2.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Lease Agreement, Equipment brought onto the Premises will remain the property of the Supplier.

7.2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

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

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

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

7.2.6 Upon termination or expiry of the Lease Agreement, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is

solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

7.3 Quality

- 7.3.1 The Supplier shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and Services must be provided has not been specified in the Lease Agreement, the Supplier shall agree the relevant standard for the provision of the Goods and Services with the Customer prior to the supply of the Goods and Services commencing and in any event, the Supplier shall perform its obligations under the Lease Agreement in accordance with the Law and Good Industry Practice.
- 7.3.2 The Supplier shall ensure that the Staff shall at all times during the Lease Agreement Period:
- 7.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and Services;
 - 7.3.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and Services to the reasonable satisfaction of the Customer; and
 - 7.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 7.3.3 The Supplier shall without prejudice to clause 7.1.4 above perform its obligations under the Lease Agreement in a timely manner.
- 7.3.4 The Supplier shall supply the Goods and Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement (if any), the Order Form and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.
- 7.3.5 The Supplier shall at all times during the Lease Agreement Period ensure that:
- 7.3.5.1 the Goods and Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;
 - 7.3.5.2 the Goods and Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Order Form;

- 7.3.5.3 the Goods and Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
- 7.3.5.4 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Supplier by the Customer; and
- 7.3.5.5 the Goods and Services are supplied in accordance with the Supplier Solution.
- 7.3.6 On notice in writing by the Customer to the Supplier, the Supplier shall make good at its own expense any defect which develops or any loss or damage sustained to the Leased Goods (howsoever caused) from the delivery and throughout the term of the rental.
- 7.3.7 If the Supplier fails to make good as provided in 7.3.6 then without prejudice to any other remedies the Customer may make good such defects or damage and deduct the cost of so doing from any monies due or which may become due to the Supplier under the Order or any other agreement with the Customer or recover the same from the Supplier as a debt.
- 7.3.8 Without prejudice to any other remedies available, where any defect in or damage to the Equipment continues for 6 hours or more then the Customer shall be entitled to a reduction in the Charges calculated in accordance with Schedule [] of the Framework Agreement.

7.4 Delivery

- 7.4.1 The Supplier shall:
 - 7.4.1.1 ensure that the Goods delivered conform in all respects with the Leased Goods specified in the Order Form, the specification for leased equipment set out in Schedule 1 of the Framework Agreement (save as altered by the Order Form), and with all other requirements of this Lease Agreement.
 - 7.4.1.2 not charge for delivery of the Leased Goods to the Premises, or for packaging used by the Supplier, other than expressly provided for in the Order Form.
 - 7.4.1.3 deliver the Leased Goods at the times and dates specified in the Order Form and Supplier agrees that the delivery shall include the unloading, stacking or installation of the Leased Goods by the Staff or the Supplier's sub-contractors or carriers at such place as the Customer shall reasonably direct.

- 7.4.2 Time of delivery shall be of the essence and failure to delivery within the time promised or specified in the Order Form shall enable the Customer (at its sole discretion) to release itself from any obligation to accept and pay for the Leased Goods and/or terminate all or part of this Lease Agreement, in either case, without prejudice to the Customer's rights and remedies set out in this Lease Agreement.
- 7.4.3 The Customer shall be under no obligation to accept or pay for any goods delivered in excess of the quantity specified in the Order Form. If the Customer elects not to accept such over-delivered goods it shall be entitled to give notice in writing to the Supplier to remove them within 5 Working Days of receipt by the Supplier of such notice and to refund to the Customer any expenses incurred by the Customer as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Customer shall be entitled to dispose of such goods and to charge the Supplier for the costs of such disposal. The risk in any over-delivered goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Customer, as appropriate.
- 7.4.4 The Customer shall be under no obligation to accept or pay for any goods supplied earlier than the date for delivery stated in the Order Form.
- 7.4.5 Without prejudice to the Customer's remedies set out in clause 7.4.2, the Customer shall not be obliged to pay any Rental for Leased Goods in respect of any period prior to the Leased Goods being delivered to the Premises Lease Agreement.
- 7.4.6 The issue by the Customer of a receipt note for the Leased Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Leased Goods. .

7.5 Control and Risk

- 7.5.1 **Control and possession** of the Leased Goods shall, without prejudice to any other rights or remedies of the Parties, remain with the Customer throughout the Term of the Lease Agreement. For the avoidance of doubt, title remains with the Supplier at all times.

- 7.6 Risk in the Leased Goods shall without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of delivery.

7.7 Damage in Transit

- 7.7.1 On dispatch of any consignment of the Leased Goods the Supplier shall send to the Customer at the Premises an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

7.7.2 Where the Leased Goods are either damaged in transit or having been placed in transit fail to be delivered to the Customer, the Customer shall elect:

7.7.2.1 to reject the consignment; or

7.7.2.2 require the Supplier free of charge to the Customer, to repair or replace the damaged Leased Goods, and deliver the repaired or replaced Leased Goods in accordance with the timescales specified in the Order Form provided that:

(a) in the case of damage to such Leased Goods in transit the Customer shall within 25 Working Days of delivery give notice to the Supplier that the Leased Goods have been damaged;

(b) in the case of non-delivery the Customer shall (provided that the Customer has been advised in writing of the dispatch of the Leased Goods) within 10 Working Days of the notified date of delivery give notice to the Supplier that the Leased Goods have not been delivered.

7.8 Inspection and Rejection

7.8.1 The Supplier shall permit the Customer and/or its authorised representatives to make any inspections or tests on the Leased Goods, which may reasonably be required and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests of the Leased Goods or inspections shall constitute a waiver by the Customer of any rights or remedies in respect of the Leased Goods and, in particular, the Customer retains the right to reject the Leased Goods.

7.8.2 The Customer may by written notice to the Supplier reject any of the Leased Goods, which fail to conform to the approved sample or fail to meet the specification stated in the Order Form. Such notice shall be given within a reasonable time after delivery to the Customer of the Leased Goods concerned. If the Customer rejects any of the Leased Goods pursuant to this clause the Customer shall be entitled (without prejudice to other rights and remedies) either:

7.8.2.1 to have the Leased Goods concerned as quickly as possible and in any event within 5 Working Days either repaired by the Supplier or (as the Customer shall elect) replaced by the Supplier with Goods that conform in all respects with the approved sample or with the specification set out in the Order Form and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

7.8.2.2 to treat the Lease Agreement as discharged by the Supplier's breach and require a refund from the Supplier in respect of any Rental or other charges paid by the Customer in respect of the Leased Goods concerned together with payment of any additional expenditure over and above the price incurred by the Customer in obtaining replacement goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

7.8.3 The issue by the Customer of a receipt note for the Leased Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Leased Goods.

7.8.4 Any Leased Goods rejected or returned by the Customer as described in Clause 5.3.5.2 shall be returned to the Supplier at the Supplier's risk and expense.

7.9 Labelling and Packaging

7.9.1 The Leased Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions and any statutory requirements and any requirements of the carriers. In particular the Leased Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.

7.10 Installation

7.10.1 Unless otherwise indicated in the Order Form, the Charges shall include the cost of installing the Leased Goods to ensure that the Leased Goods are fit for purpose for use by the Customer.

7.10.2 The Supplier shall carry out the installation in good workmanship manner and in accordance with Good Industry Practice.

7.10.3 The Supplier shall make no delivery of materials, equipment or other things nor commence any work on the Customer's Premises without obtaining prior Approval.

7.10.4 Access to the Customer's Premises shall not be exclusive to the Supplier but shall be limited to such Staff and Supplier's sub-contractors as are necessary to enable the performance of the Agreement concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Customer may reasonably require.

7.10.5 Where any access to the Customer's Premises is necessary in connection with delivery or installation, the Supplier and the Supplier's Staff and sub-contractors shall at all times comply with

the reasonable requirements of the Customer's security procedures as notified to the Supplier from time to time.

- 7.10.6 The Customer shall have the right at any time during the progress of the Lease Agreement to require the Supplier to remove from the Customer's Premises any materials which in the opinion of the Customer are either hazardous, noxious or not in accordance with the Agreement.
- 7.10.7 The Supplier shall ensure that the Leased Goods are safe and without risk to health when installed and properly used.
- 7.10.8 On completion of the installation works the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Customer's Premises all rubbish arising out of the Lease Agreement and leave the Customer's Premises in a neat and tidy condition.

7.11 Possession and Location

- 7.11.1 The Customer shall have the right to quiet possession of the Leased Goods in accordance with the terms of the Lease Agreement.
- 7.11.2 The Customer shall not, without the written consent of the Supplier (such consent not to be unreasonably withheld or delayed):
 - 7.11.2.1 modify or replace the Leased Goods except in accordance with Clause **7.21**
 - 7.11.2.2 use the Leased Goods as security for a loan or other obligation;
 - 7.11.2.3 sell, or attempt to sell, part with possession of, or encumber the Leased Goods;
 - 7.11.2.4 allow anyone to obtain a lien over, or right to retain, the Leased Goods;
 - 7.11.2.5 move the Leased Goods from the location in which they were installed except where it is necessary to do so for the purposes of maintaining and repairing the Leased Goods.

7.12 Software Licences

- 7.12.1 The Supplier hereby grants to the Customer, for the duration of the Lease Agreement, a fully paid up, royalty free, licence to use, copy, and sub-licence any software installed in the Leased Goods or required by the Customer in order to make full use of the Leased Goods.
- 7.12.2 To the extent that any software referred to in Clause 7.12.1 belongs to, or is subject to rights of, a third party, the Supplier shall be responsible for obtaining, for the benefit of the Customer, licences

from such third parties to allow the Customer to make full use of the Leased Goods.

7.13 Training

- 7.13.1 Unless otherwise indicated in the Order Form, the Charges shall include the cost of instruction of the Customer's personnel in the use and maintenance of the Leased Goods, such instruction to be in accordance with the specification for training set out in Schedule 1 of the Framework Agreement or as otherwise set out in the Order Form.
- 7.13.2 Throughout the Term the Supplier shall provide support and guidance to the Customer in determining the most effective and efficient way of using the Leased Goods to meet the Customer's requirements, including by bringing to the Customer's attention possible upgrades and further services which the Supplier is able to provide.

7.14 Provision of Services

7.14.1 The Services

- 7.14.1.1 This Clause 5.14 shall apply to the provision of any Services, including the Maintenance Services.
- 7.14.1.2 The Supplier shall supply the Services during the Term in accordance with the Customer's requirements set out in the Order Form in consideration for the payment of the Lease Agreement Charges.
- 7.14.1.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Lease Agreement or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Lease Agreement within such reasonable time as may be specified by the Customer.
- 7.14.1.4 Subject to the Customer providing Approval in accordance with Clause 5.14.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Lease Agreement, including in relation to commencing the supply of the Services within the time agreed or on a date specified in the Order Form [and performing any Milestones by the relevant Milestones Date.]

7.14.2 Provision and Removal of Equipment

- 7.14.2.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 7.14.2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval from the Customer.
- 7.14.2.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.
- 7.14.2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 7.14.2.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - (a) remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Lease Agreement; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 7.14.2.6 On completion of the Services, the Supplier shall remove the Equipment free of any charge, together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

7.15 Manner of Carrying Out the Services

- 7.15.1 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Lease Agreement, the Supplier shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and in any event, the Supplier shall perform its obligations under the

Lease Agreement in accordance with the Law and Good Industry Practice.

7.15.2 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

7.15.2.1 The Supplier must ensure that its Staff shall at all times during the Term:

- (a) faithfully and diligently perform those duties and exercise such powers consistent with them as are from time to time necessary in connection with the provision of the Services; and
- (b) obey all lawful instructions and reasonable directions of the Customer and perform the Services to the reasonable satisfaction of the Customer.

7.16

7.17 Testing

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

7.18 Guarantee

The Supplier hereby guarantees the Leased Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Leased Goods as may have arisen during such Guarantee Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

7.19 Service Levels

7.19.1 The Supplier shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of schedule 6 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Lease Agreement with immediate effect upon giving written notice to the Supplier.

7.19.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

7.20 Maintenance

- 7.20.1 Without prejudice to the generality of clause 7.14, this Clause 7.20 shall apply to the provision of the Maintenance Services.
- 7.20.2 The Supplier shall supply the Maintenance Services during the Term in accordance with the specification for maintenance services set out in Schedule 1 of the Framework Agreement or as otherwise set out in the Order Form.
- 7.20.3 Except where specified otherwise in the Order Form the Maintenance Services shall include the provision of spares, replacement parts, consumables, toner and staples and the Supplier shall not be entitled to make any additional charge for the supply of such items, except where expressly set out in the Order Form.
- 7.20.4 If any of the Leased Goods breaks down and the Supplier is not able to repair Leased Goods in accordance with the specification and timescales set out in Schedule 1 of the Framework Agreement or as otherwise set out in the Order Form, the Supplier shall, at its own cost, without delay, replace any Leased Goods that are not operational with goods of the same type and upon the same terms as the original Leased Goods.
- 7.20.5 All replacement parts fitted to the Leased Goods and all substitutions for the Leased Goods shall become the property of the Supplier and subject to the Order.
- 7.20.6 Clause 7.20.5 shall not apply to upgrades or improvements to the Goods made in accordance with Clause 7.21.
- 7.20.7 The Supplier shall, subject to the provisions of Clause 14, be entitled to inspect the Leased Goods at any time having given reasonable notice to the Customer.

7.21 Upgrades and Improvements

- 7.21.1 At any time the Customer may upgrade or improve the Leased Goods by replacing component parts (but not the Leased Goods in their entirety) with new or used parts or by installing new software with the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 7.21.2 If the Customer upgrades or improves the Leased Goods by replacing component parts of the Leased Goods with new or used component parts or by installing software, such upgrades or improvements shall belong to the Customer and the Customer shall have the option to remove any such replacement parts, or uninstall any software that it has installed, before the Supplier collects the Leased Goods on expiry or earlier termination of the Lease Agreement provided that the removal of such replacement parts shall not damage the Leased Goods.

- 7.21.3 On termination of the Lease Agreement for whatsoever reason where any component parts of the Leased Goods owned by the Supplier have been removed, or software de-installed, as a result of any upgrade or improvement to the Leased Goods, the Customer shall either:
- 7.21.3.1 reinstate the original component parts or re-install the original software; or
 - 7.21.3.2 substitute component parts or install software (where possible from the same manufacturer) reasonably similar to the removed component parts or software; or
 - 7.21.3.3 offer for acceptance by the Supplier in substitution for the removed parts or uninstalled software (such acceptance not to be unreasonably withheld or delayed) any component parts or software used in upgrading or improving the Leased Goods.

7.22 Return of the Leased Goods

- 7.22.1 The Supplier shall give the Customer 6 months' notice in writing of the Completion Date.
- 7.22.2 As soon as practicable upon (and in any event within 10 days of) expiry, or termination of the Lease Agreement, the Supplier shall, at its own cost, collect the Leased Goods from the Premises.
- 7.22.3 Notwithstanding the Supplier's responsibility to collect the Leased Goods upon the expiry or termination of the Lease Agreement, the Customer shall at its own expense ensure the safe and proper storage of the Leased Goods until the Goods are collected by the Supplier.
- 7.22.4 The Customer will cease to be liable for any Rental in respect of the Leased Goods after the Completion Date.
- 7.22.5 On or before the Completion Date, the Customer shall:
- 7.22.5.1 cease using the Leased Goods;
 - 7.22.5.2 at its own cost, ensure that the Leased Goods are in the same complete working order and condition as when installed unless;
 - (a) Any damage or defects are reasonably attributable to fair wear and tear; or
 - (b) The aggregate cost of repairing any and all damage or defects is equal to or less than £250

7.22.5.3 at its own cost, remove all the Customer's data that is stored in or on the Leased Goods; and

7.22.5.4 make the Leased Goods available for collection whenever the Supplier reasonably requires.

7.23 The Customer shall ensure throughout the duration of the Lease Agreement that the Leased Goods are kept in a good and serviceable condition so that upon expiry or termination of the Lease Agreement the Customer will be able to comply with the requirements of Clause 7.22.5.

7.24 In the event that the Customer is unable to make the Leased Goods available for collection by the Supplier in accordance with Clause 5.22.5.4 due to total loss of the Leased Goods, the Customer shall be liable to pay to the Supplier, in addition to any Rentals and any other sums due to the Supplier upon the termination or expiry of this Lease Agreement the Residual Value of the Leased Goods.

7.25 In the case of any dispute between the parties about their respective obligations under these return conditions then, in accordance with the obligation on the Parties to attempt to negotiate a settlement to any dispute under Clause 50.2 , the Parties may jointly appoint an independent expert to assess and report on the condition of the Leased Goods the expert's costs being borne by the party against whom the independent expert makes his award.

8. ASSISTANCE ON EXPIRY OR TERMINATION

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

9. DISASTER RECOVERY AND BUSINESS CONTINUITY

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

10. MONITORING OF LEASE AGREEMENT PERFORMANCE

10.1 The Supplier shall comply with the monitoring arrangements referred to in paragraph 5.6 of the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Lease Agreement.

10.2 Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form set out in the Management Information schedule 8 of the Framework Agreement (as amended from time to time) on such date during the Lease Agreement Period as specified in paragraph 5.6 of the Order Form.

11. CONTINUOUS IMPROVEMENT

11.1 The Supplier shall have an ongoing obligation throughout the Lease Agreement Period to identify new or potential improvements to the Services pursuant to

which it will regularly review with the Customer the Goods and Services and the manner in which it is providing the Goods and Services with a view to reducing the Customer's costs (including the Lease Agreement Price) and/or improving the quality and efficiency of the Goods and Services and to comply with any specific provisions in accordance with the provisions referred to in paragraph 5.6 of the Order Form (if any).

- 11.2 Any amendments to the Goods and Services and/or the Lease Agreement Price, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with clause 9.1, shall be implemented by the Supplier (subject to compliance with EU procurement Law and the Framework Agreement) and the Supplier shall implement such variation amendment or improvement at no additional cost to the Customer.
- 11.3 The Supplier shall ensure that the information that it provides to the Customer in accordance with clause 11.1 shall be sufficient for the Customer to decide whether any improvement to the Services should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services identified by the Supplier.
- 11.4 Notwithstanding the Supplier's obligations under clause 9.1 to 9.3 above, the Customer shall be entitled to regularly benchmark the Lease Agreement Price and performance of the Goods and Services, against other suppliers providing services substantially the same as the Goods and Services during the Lease Agreement Period in order to compare the Lease Agreement Price and level of performance of the Goods and Services with charges and service offered by third parties so as to provide the Customer with information for comparison purposes.
- 11.5 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in clause 9.4 above.
- 11.6 The Customer shall be entitled to disclose the results of any benchmarking of the Lease Agreement Charges and provision of the Goods and Services carried out under clause 9.4 to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 11.7 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking in accordance with clause 9.4 and such information requirements shall be at the discretion of the Customer.
- 11.8 Where, as a consequence of any benchmarking carried out by the Customer under clause 9.4, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Lease Agreement Variation procedures set out in clause 39.
- 11.9 The benefit of any work carried out by the Supplier to improve or update the Goods and Services or to facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Lease Agreement Charges or the provision of the Goods and Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 7

(Value for Money), shall be implemented by the Supplier (subject to EU procurement Law and the Framework Agreement) at no additional cost to the Customer.

12. [DISRUPTION]

- 12.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Lease Agreement it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 12.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Lease Agreement.
- 12.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and Services in accordance with its obligations under the Lease Agreement.
- 12.4 If the Supplier's proposals referred to in clause 12.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Lease Agreement may be terminated with immediate effect by the Customer by notice in writing.
- 12.5 If the Supplier is temporarily unable to fulfil the requirements of the Lease Agreement owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.]

13. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE LEASED GOODS

- 13.1 Without prejudice to any other right or remedy which the Customer may have, if any Goods and Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Lease Agreement then the Customer may (whether or not any part of the Goods and Services have been Delivered) do any of the following:
 - 13.1.1 at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any defect in the Leased Goods and/or failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Goods and Services and carry out any other necessary work to ensure that the terms of the Lease Agreement are fulfilled, in accordance with the Customer's instructions;
 - 13.1.2 reject the Goods (in whole or in part) and require the Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Supplier;

- 13.1.3 refuse to accept any further Goods and Services to be Delivered but without any liability to the Customer;
 - 13.1.4 if paragraph 5.1 of the Order Form provides for the payment of Delay Payments, then the Supplier shall pay such amounts (calculated in accordance with paragraph 5.1 of the Order Form) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is Achieved;
 - 13.1.5 carry out at the Supplier's expense any work necessary to make the Goods and Services comply with the Lease Agreement;
 - 13.1.6 without terminating the Lease Agreement, itself supply or procure the supply of all or part of the Goods and Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Goods and Services in accordance with the Lease Agreement;
 - 13.1.7 without terminating the whole of the Lease Agreement, terminate the Lease Agreement in respect of part of the Goods and Services only (whereupon a corresponding reduction in the Lease Agreement Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and Services; and/or
 - 13.1.8 charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and Services.
- 13.2 In the event that the Supplier:
- 13.2.1 fails to comply with clause 13.1 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
 - 13.2.2 persistently fails to comply with clause 13.1 above,
- the Customer may terminate the Lease Agreement with immediate effect by giving the Supplier notice in writing.

14. [PREMISES]

14.1 Inspection of Premises

- 14.1.1 The Supplier acknowledges that it has inspected the Customer's Premises and has advised the Customer of any aspect of the Customer's Premises that is not suitable for the provision of the

Goods and Services and that the specified actions to remedy the unsuitable aspects of the Customer's Premises, together with a timetable for and the costs of those actions, have been specified in paragraph 3.8 of the Order Form.

- 14.1.2 If the Supplier has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions in accordance with clause 14.1.1 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Customer's Premises except in respect of any latent structural defect in the Customer's Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Customer's Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval.
- 14.1.3 Any disputes relating to due diligence as set out in clause 4 or this clause 14 shall be resolved in accordance with the Dispute Resolution Procedure.

14.2 Licence to occupy Premises

- 14.2.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with the Lease Agreement shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Lease Agreement. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Lease Agreement.
- 14.2.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Lease Agreement and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 14.2.3 Save in relation to such actions identified by the Supplier in accordance clause 12.2.1 and set out in paragraph 3.8 of the Order Form, should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this clause 14.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 14.2.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear

and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 14.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Lease Agreement, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

14.3 Property

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

15. PAYMENT AND CONTRACT CHARGES

15.1 Lease Agreement Charges

- 15.1.1 In consideration of the Supplier's performance of its obligations under the Lease Agreement, the Customer shall pay the Lease Agreement Charges in accordance with clause 15.2 (Payment and VAT).
- 15.1.2 The Customer shall, in addition to the Lease Agreement Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and Services supplied in accordance with the Lease Agreement.
- 15.1.3 If at any time during the Lease Agreement Period the Supplier reduces its Rates of Charges **not fixed at the outset of this Lease Agreement** for any Goods and Services which **are** provided under the Framework Agreement (whether or not such Goods and Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Lease Agreement Price for such Goods and Services under this Lease Agreement by the same amount.
- 15.1.4 The benefit of any work being done pursuant to the provisions of Schedule 7 (Value for Money) of the Framework Agreement) which is specifically commissioned from the Supplier by another Contracting Body at any time prior to or during the Lease Agreement Period to reduce costs or to improve the quality or efficiency of the Goods and Services or to facilitate their delivery shall be offered by the Supplier to the Customer at no charge.

15.2 Payment and VAT

- 15.2.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within the time period specified in paragraphs 7.1 and 7.2 of the Order Form.
- 15.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 15.2.3 Where the Supplier enters into a Sub-contract it shall ensure that a provision is included in such Sub-contract which requires payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) Working Days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-contract.
- 15.2.4 The Supplier shall add VAT to the Lease Agreement Charges at the prevailing rate as applicable.

- 15.2.5 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Lease Agreement. Any amounts due under this clause 15.2.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 15.2.6 The Supplier shall not suspend the supply of the Services and/or Goods (as applicable) unless the Supplier is entitled to terminate the Lease Agreement under clause 27.4 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 15.2.7 [The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.]

15.3 Recovery of Sums Due

- 15.3.1 Wherever under the Lease Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Lease Agreement), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Lease Agreement or under any other agreement or contract with the Customer.
- 15.3.2 Any overpayment by either Party, whether of the Lease Agreement Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 15.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 15.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Lease Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

15.4 Euro

- 15.4.1 Any requirement of Law to account for the Goods and Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 15.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 15.4.1 by the Supplier.

16. [KEY PERSONNEL]

- 16.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-contractor shall obtain Approval before removing or replacing any Key Personnel during the Lease Agreement Period.
- 16.2 The Supplier shall provide the Customer with at least [one (1)] Month's written notice of its intention to replace any member of Key Personnel.
- 16.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-contractor.
- 16.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 16.5 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

17. SUPPLIER'S STAFF

- 17.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
 - 17.1.1 any member of the Staff; or
 - 17.1.2 any person employed or engaged by any member of the Staff,whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 17.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Lease Agreement, specifying the capacities in which they are concerned with the Lease Agreement and giving such other particulars as the Customer may reasonably request.

- 17.3 Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.
- 17.4 If the Supplier fails to comply with clause 17.2 within [three (3)] weeks of the date of the request, the Customer may terminate the Lease Agreement, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 17.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with clause 17.2 shall be final and conclusive.

[Relevant Convictions]

- 17.6 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in any part of the provision of the Goods and Services without Approval.
- 17.7 For each member of Staff who, in providing the Goods and Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-contractor shall):
- 17.7.1 carry out a policy check with the records held by DfES;
 - 17.7.2 conduct thorough questioning regarding any Relevant Convictions; and
 - 17.7.3 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau,
- and the Supplier shall not (and shall ensure that any Sub-contractor shall not) engage or continue to employ in the provision of the Goods and Services any person who has a Relevant Conviction or an inappropriate record.]

18. [TUPE]

- 18.1 The Customer shall, based upon a reasonable assessment of the facts, state in paragraph 3.3 of the Order Form which TUPE wording set out in Parts A, B and C (Parts A and B may both apply) of this clause 16 will apply to the Lease Agreement.

[Guidance Note: Please see TUPE clauses in Part A and Part B of clause 16 which must be used where TUPE applies at commencement. Part A applies where the Customer itself currently carries out the Services and is being replaced by the Supplier. Part B applies where the Customer currently engages a third party to provide the Services and is replacing such third party with the Supplier. PLEASE DELETE AS APPROPRIATE]

PART A

- 18.2 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Lease Agreement will be a “Relevant Transfer” to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Transferring Customer Employee.
- 18.3 The Customer will perform and discharge all its obligations in respect of all the Transferring Customer Employees prior to the Relevant Transfer Date including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.
- 18.4 The Supplier shall comply with all of its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Customer Employees from and after the Relevant Transfer Date. The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier's failure to comply with all of its obligations under TUPE and/or perform and discharge any such obligation.
- 18.5 The Customer will indemnify the Supplier against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of:
- 18.5.1 any act or omission by the Customer relating to a Transferring Customer Employee occurring on or before the Relevant Transfer Date or any other matter, event or circumstance (other than an act or omission of the Supplier or any Sub-Contractor) occurring or having its origin before the Relevant Transfer Date ;
 - 18.5.2 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for which it is alleged the Supplier may be liable by virtue of this Lease Agreement and/or TUPE and/or the Acquired Rights Directive; and
 - 18.5.3 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the Supplier's or any Sub-contractor's failure to comply with Regulation 13(4) of TUPE.
- 18.6 If any person who is not a Transferring Customer Employee claims, or it is determined, that his contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:

- 18.6.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
 - 18.6.2 the Customer may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.
- 18.7 If such offer is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall immediately release the person from his employment.
- 18.8 If, after the fifteen (15) Working Day period specified in clause 18.6.2 has elapsed:
- 18.8.1 no such offer of employment has been made; or
 - 18.8.2 such offer has been made but not accepted; or
 - 18.8.3 the situation has not otherwise been resolved,
- the Supplier may within five (5) Working Days give notice to terminate the employment of such person.
- 18.9 Subject to the Supplier acting in accordance with the provisions of clauses 16.2 to 16. (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will indemnify the Supplier against all Employee Liabilities arising out of termination pursuant to the provisions of clause 16.8.
- 18.10 If any such person as is described in clause 16.6 is neither re-employed by the Customer nor dismissed by the Supplier within the time scales set out in clauses 16.2 to 16.17 (inclusive) such person will be treated as a Transferring Customer Employee.
- 18.11 The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier's and any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Transferring Customer Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Customer Employee.
- 18.12 The Supplier shall indemnify the Customer against all Employee Liabilities in connection with or arising from any claim made by or in respect of any Transferring Customer Employee (or, where applicable, any trainee or employee representative (as defined in TUPE) of any Transferring Customer Employee) arising out of or in connection with:

- 18.12.1 any act or omission of the Supplier or any Sub-contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Relevant Transfer Date or any other matter, event or circumstance occurring or having its origin after the Relevant Transfer Date including any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Customer's failure to comply with its obligations under TUPE;
- 18.12.2 in relation to the breach or non-observance by the Supplier after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Customer Employee;
- 18.12.3 any proceeding, claim or demand by the Inland Revenue or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 18.12.3.1 in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and
 - 18.12.3.2 in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.
- 18.12.4 in relation to his/her employment or its termination arising or occurring after the Relevant Transfer Date;
- 18.13 The Supplier shall notify the Customer of any claims by any Transferring Customer Employee as soon as practicably possible to allow the Customer to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.
- 18.14 The Supplier will, and will procure that any Sub-contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any

Transferring Customer Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance. Parts A, B, D and E of schedule 8 will apply.

- 18.15 The Customer warrants that the information provided to the Supplier regarding Transferring Customer Employees shall be true and accurate in all material respects.
- 18.16 The Customer agrees that it shall not other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services during the period prior to the Relevant Transfer Date save where legally or contractually obliged to do so:
- 18.16.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
 - 18.16.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
 - 18.16.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 18.16.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees; and
 - 18.16.5 increase or reduce the total number of employees so engaged, replace or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any Transferring Customer Employee save for:
 - 18.16.5.1 the execution of assigned operations as detailed in 16.16.3; and/or
 - 18.16.5.2 replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;

PART B

- 18.17 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Lease Agreement will be a "Relevant Transfer" to which TUPE and/or the

Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Former Supplier and the Former Supplier Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Former Supplier Employee.

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

- 18.20.3.1 in relation to any Former Supplier Employees, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - 18.20.3.2 in relation to any employee who is not a Former Supplier Employees, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 18.21 If any person who is not a Former Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Former Supplier to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
 - 18.21.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (which may include notice to an Former Supplier); and
 - 18.21.2 the Former Supplier may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.
- 18.22 If such offer is accepted, or if the situation has otherwise been resolved by the Former Supplier, the Supplier shall immediately release the person from his employment.
- 18.23 If, after the fifteen (15) Working Day period specified in clause 18.21.2 has elapsed:
 - 18.23.1 no such offer of employment has been made; or
 - 18.23.2 such offer has been made but not accepted; or
 - 18.23.3 the situation has not otherwise been resolved,the Supplier may within five (5) Working Days give notice to terminate the employment of such person.
- 18.24 Subject to the Supplier acting in accordance with the provisions of clauses 16.17 to 16.23 (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will indemnify the Supplier against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any employee (or,

where applicable, any trainee or employee representative of any employee) in relation to the operation of TUPE upon the contract of employment or upon the employment or termination by the Supplier of the employment of any employee, subject to the provisions of clause 16.23, who is later alleged or determined to have transferred to the employment of the Supplier pursuant to TUPE.

- 18.25 If any such person as is described in clause 18.21 is neither re-employed by the Former Supplier nor dismissed by the Supplier within the time scales set out in clauses 16.17 to 16.23 (inclusive) such person will be treated as a Former Supplier Employee.
- 18.26 The Supplier shall indemnify the Customer on behalf of the Former Supplier against all Employee Liabilities arising from the Supplier's or any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Former Supplier Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Former Supplier Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Former Supplier Employee.
- 18.27 The Supplier will, and will procure that any Sub-contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Former Supplier Employee who is a Second Generation Fair Deal Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance. Parts A, C, D and E of schedule 8 will apply.
- 18.28 The Supplier shall indemnify the Customer for itself and on behalf of the Former Supplier against all Employee Liabilities (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Supplier Employee (or, where applicable, any trainee or employee representative of any Former Supplier Employee) arising or in connection with:
- 18.28.1 his/her employment or its termination arising or occurring after the Relevant Transfer Date;
 - 18.28.2 a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Former Supplier Employee in respect of the period after the Relevant Transfer Date;
 - 18.28.3 any act or omission by the Supplier or any Sub-contractor occurring on or after the Relevant Transfer Date;
 - 18.28.4 any claim made by or in respect of a Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its or their

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

- 18.28.5 any statement communicated to or action undertaken by the Supplier to, or in respect of, any Former Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing.
- 18.28.6 the breach or non-observance by the Supplier during the period after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employee;
- 18.28.7 any proceeding, claim or demand by the Inland Revenue or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 18.28.7.1 in relation to any Former Supplier Employee, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and
 - 18.28.7.2 in relation to any employee who is not a Former Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.
- 18.28.8 The Supplier shall notify the Customer of any claims by any Former Supplier Employee as soon as practicably possible to allow the Customer and the Former Supplier to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.

[PART C

[Guidance Note: Only to be used where TUPE is not intended to apply at commencement.]

- 18.29 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Lease Agreement will not be a "Relevant Transfer" to which TUPE will apply in relation to any employees of the Customer. In the circumstances, the Customer and the Supplier agree that no employees of the Customer will transfer to the Supplier by virtue of the operation of TUPE or the Acquired Rights Directive.
- 18.30 If any employee of the Customer claims or it is determined that his contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
- 18.30.1 The Supplier will, within seven (7) Days of becoming aware of that fact, give notice in writing to the Customer;
 - 18.30.2 The Customer may offer employment to such person within twenty one (21) Days of the notification by the Supplier or take such other steps as it considers appropriate to deal with the matter;
 - 18.30.3 If such offer is accepted (or if the situation has otherwise been resolved by the Customer), the Supplier shall immediately release the person from his employment;
 - 18.30.4 If after the twenty one (21) Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Supplier may within seven (7) Days give notice to terminate the employment of such person;
 - 18.30.5 Subject to clause 16.31 and subject to the Supplier acting in this way or in such other way as may be agreed between the Customer and the Supplier, the Customer will indemnify the Supplier against all Employee Liabilities arising out of such termination provided the Supplier complies with all applicable proper employment procedures.
 - 18.30.6 If such person is neither re-employed by the Customer nor dismissed by the Supplier within the time scales set out in this clause 16.30 such person will be treated as having transferred to the Supplier by virtue of the operation of TUPE and the Supplier shall comply with such obligations as may be imposed upon it under TUPE or otherwise by Law.
- 18.31 The indemnity in clause 16.30.5 shall only apply where the notification referred to in clause 16.30.1 is made by the Supplier to the Customer within six (6) Months of the Relevant Transfer Date.]

19. PRE-SERVICE TRANSFER OBLIGATIONS

19.1 The Supplier agrees that, subject to compliance with the Data Protection Legislation:

19.1.1 within twenty (20) Working Days of the earliest of:

19.1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or

19.1.1.2 receipt of the giving of notice of early termination of this Lease Agreement or any part thereof; or

19.1.1.3 the date which is twenty four (24) Months before the due expiry date of this Lease Agreement,

it shall provide the Supplier's Provisional Staff List which the Supplier believes will transfer to the Customer or the Replacement Supplier (as the case may be), together with Staffing Information in relation to such employees and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Customer;

19.1.2 at least ten (14) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer for itself or on behalf of any Replacement Supplier (as the case may be) a final list of Transferring Supplier Employees which shall transfer under TUPE (the "**Supplier's Final Staff List**"); and

19.1.3 the Customer shall be permitted to use and disclose information provided by the Supplier under clause 17.1 for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services.

19.2 The Supplier's Final Staff List will identify which of the Staff named are Transferring Supplier Employees. The provision of personal data regarding those individuals detailed on the Supplier's Final Staff List is subject to the consent of such individuals (which the Supplier will use its reasonable endeavours to obtain) and being mindful that the final "Personalised List" can change up to the date of transfer or in the absence of such individual's approval, the Supplier's Final Staff List being suitably anonymised so as to comply with the DPA.

19.3 The Supplier warrants, for the benefit of the Customer and any Replacement Supplier, that the information provided under clauses 17.1 and 17.2 of this Lease Agreement shall be true and accurate in all material respects.

19.4 From the date of the earliest event referred to in clauses 17.1.1.1 to 17.1.1.3 (inclusive), the Supplier agrees, for the benefit of the Customer and any Replacement Supplier, that it shall not, and agrees to procure that its Sub-

contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:

- 19.4.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
- 19.4.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
- 19.4.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 19.4.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List; and
- 19.4.5 increase or reduce the total number of employees so engaged, replace any Staff listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save for:
 - 19.4.5.1 the execution of assigned operations as detailed in 17.4.3; and/or
 - 19.4.5.2 replacing voluntary resignations or Staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;
- 19.5 The Supplier will promptly notify or as appropriate will procure that the Sub-contractor will promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment given by the Supplier or any Subcontractor or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.
- 19.6 During the Lease Agreement Period, the Supplier will provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the DPA) including without limitation the Staffing Information and, upon reasonable request by the Customer and subject only to any limitation imposed by the DPA, the Supplier will provide, and will procure that its Subcontractors will provide, the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and will allow the Customer or the Replacement Supplier to have copies of any such documents.

- 19.7 Within seven (7) Working Days following the Service Transfer Date, the Supplier will provide to the Customer or any Replacement Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Supplier Employee:

- 19.7.1.1 the most recent Month's copy pay slip data;
- 19.7.1.2 details of cumulative pay for tax and pension purposes;
- 19.7.1.3 details of cumulative tax paid;
- 19.7.1.4 tax code;
- 19.7.1.5 details of any voluntary deductions from pay; and
- 19.7.1.6 bank/building society account details for payroll purposes.

20. TUPE EXIT PROVISION

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

- 20.4.1 any act or omission by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date;
- 20.4.2 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for which it is alleged that the Customer or any Replacement Supplier may be liable by virtue of this Lease Agreement and/or TUPE and/or the Acquired Rights Directive;
- 20.4.3 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 of except to the extent that the liability arises from the Customer's or any Replacement Supplier's failure to comply with Regulation 13(4) of TUPE;
- 20.4.4 any statement communicated to or action undertaken by the Supplier to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing;
- 20.4.5 in relation to any proposed change by the Supplier in the working conditions or terms of employment of any Transferring Supplier Employees to take effect after the Service Transfer Date (including any claim for constructive dismissal), whether such change is proposed before or after the Service Transfer Date;
- 20.4.6 a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Supplier Employees in respect of the period on or before the Service Transfer Date);
- 20.4.7 in respect of any fact or matter concerning or arising from the Transferring Supplier Employees employment, or the termination thereof, on or before the Service Transfer Date including (any claim for a redundancy payment;
- 20.4.8 in relation to the breach or non-observance by the Supplier during the period prior to the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees; and
- 20.4.9 any proceeding, claim or demand by the Inland Revenue or other statutory authority in respect of any financial obligation including,

but not limited to, PAYE and primary and secondary national insurance contributions:

- 20.4.9.1 in relation to any Transferring Supplier Employees, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Service Transfer Date; and
 - 20.4.9.2 in relation to any employee who is not a Transferring Supplier Employees, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Supplier to the Customer or the Replacement Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Service Transfer Date.
- 20.5 If any person who is not a Transferring Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Supplier or any Sub-contractor to the Customer or any Replacement Supplier pursuant to TUPE or the Acquired Rights Directive, then:
 - 20.5.1 the Customer will and shall use its reasonable endeavours to procure that the Replacement Supplier will, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 20.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Supplier or take such other steps as it considers appropriate to deal with the matter.
- 20.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier, the Customer shall and shall use its reasonable endeavours to procure that the Replacement Supplier shall immediately release the person from his employment.
- 20.7 If, after the fifteen (15) Working Day period specified in clause 18.5.2 has elapsed:
 - 20.7.1.1 no such offer of employment has been made; or
 - 20.7.1.2 such offer has been made but not accepted; or
 - 20.7.1.3 the situation has not otherwise been resolved,

the Customer may and shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment of such person.

- 20.8 Subject to the Customer or the Replacement Supplier acting in accordance with the provisions of this clause 18 and in accordance with all applicable proper employment procedures set out in Law, the Supplier shall indemnify the Customer for itself and on behalf of the Replacement Supplier against all Employee Liabilities arising out of termination pursuant to the provisions of clause 18.7.
- 20.9 If any such person as is described in clause 18.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Customer or Replacement Supplier within the time scales set out in this clause 18, such person will be treated as a Transferring Supplier Employee.
- 20.10 The Customer shall indemnify the Supplier against all Employee Liabilities arising from the Customer's, and shall procure that the Replacement Supplier shall indemnify the Supplier against all Employee Liabilities arising from the Replacement Supplier's, failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Supplier Employee arising from or as a result of any act or omission by the Customer or a Replacement Supplier (as appropriate) relating to a Transferring Supplier Employee occurring before, on or after the Service Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Service Transfer Date which would give rise to a substantial change in working conditions of a Transferring Supplier Employee to the material detriment of a Transferring Supplier Employee.
- 20.11 The Customer shall procure that the Replacement Supplier shall indemnify the Supplier against any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or any of its sub-contractors in relation to its or their obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its obligations under Regulation 13(4) of TUPE except to the extent that the liability arises from any Supplier's or Supplier Subcontractor's failure to comply with its obligations under TUPE.
- 20.12 The Customer shall indemnify the Supplier against any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Customer in relation to its obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13(4) of TUPE except to the extent that the liability arises from the Supplier's or Supplier Subcontractor's failure to comply with Regulation 13 of TUPE.
- 20.13 If, in the event of a Service Transfer to which TUPE or the Acquired Rights Directive do not apply the following provisions shall apply:
- 20.13.1 the Customer can and shall advise the Replacement Supplier that it can, in its discretion, make to any of the employees

identified on the list provided by the Supplier under clause 18, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the termination referred to in clause 18.2.

20.13.2 When the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-contractor shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Supplier, which could be without the employee or worker having worked his full notice period, if the employee so requests.

20.13.3 If the employee does not accept an offer of employment made by the Customer or Replacement Supplier, or no such offer is made, the employee shall remain employed by the Supplier (or the relevant Sub-contractor, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Supplier or the relevant Sub-contractor and the Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-contractor.]

21. TRAINING

- 21.1 The Supplier shall provide training to the Customer's personnel in accordance with paragraph 3.7 of the Order Form (if any) in respect of the use and maintenance of the Goods.
- 21.2 The Lease Agreement Charges shall include the cost of any training and instruction of the Customer's personnel in the use and maintenance of the Goods.

22. STAFFING SECURITY

- 22.1 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged in the provision of the Goods and Services. The Supplier confirms that all Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 22.2 The Supplier shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Goods and Services in compliance with the Security Policy and Security Management Plan.
- 22.3 The Supplier agrees that it will not require that the persons engaged by any Sub-contractor obtain Clearance who have not previously held Clearance except where there is an urgent priority requirement including:
 - 22.3.1 Clearance being genuinely necessary and proportionate; or
 - 22.3.2 [the work must be completed by the relevant person within thirty (30) Working Days (in relation to Defence Vetting Agency Security

Checks and Defence Vetting Agency Counter Terrorist Checks ("CTC") and 100 days (in relation to Defence Vetting Agency Developed Vetting) of the Commencement Date; or

- 22.3.3 the role of the Sub-contractor requires immediate and routine unsupervised access to:
 - 22.3.3.1 sites or persons at risk of terrorist attack, in which case a CTC can be required; or
 - 22.3.3.2 assets protectively marked as at least SECRET.]
- 22.4 Save in respect of the circumstances set out in clause 22.3 above in the event that it will take longer for the Supplier to carry out the work than to secure Clearance, the Customer's existing practices for escorting and supervising un-cleared Sub-contractors will be followed until such time as the Sub-contractor's Clearance is confirmed.
- 22.5 Where the persons engaged by a Sub-contractor have previously held Clearance, the Supplier may consider such person's Clearance as current if that person has not worked continuously on jobs where Clearance is required, only where the following conditions are met:
 - 22.5.1 that person's existing Clearance is not more than three years old in relation to non List x or five years old in relation to List x;
 - 22.5.2 the Sub-contractor has worked on a previous job and had required clearance in the past 12 months; or
 - 22.5.3 the Sub-contractor has not resided overseas for more than six months since its last cleared post.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1 Save as expressly granted elsewhere under the Lease Agreement:
 - 23.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - 23.1.1.1 the Supplier Software;
 - 23.1.1.2 the Documentation; or
 - 23.1.1.3 the Supplier Pre-Existing IPR,and
 - 23.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
 - 23.1.2.1 the Customer Software;
 - 23.1.2.2 the Customer Pre-Existing IPR;

- 23.1.2.3 the Customer Data;
 - 23.1.2.4 the Assigned Software; or
 - 23.1.2.5 Specially Written Software;
 - 23.1.2.6 the Project Specific IPR;
- 23.2 Where either party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 23.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).
- 23.3 The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Lease Agreement) without Approval, use or disclose any of the Customer's Software, Customer's Pre-Existing IPR, Assigned Software, Customer Data, Specially Written Software or the Project Specific IPRs to any third party.
- 23.4 [In relation to the Supplier Software:
 - 23.4.1 the Gold Software shall be licensed on the Gold License Terms;
 - 23.4.2 the Silver Software shall be licensed on the Silver License Terms;
 - 23.4.3 the Bronze Software shall be licensed on the Bronze License Terms;
 - 23.4.4 the COTS Software shall be licensed on the COTS License Terms; and
 - 23.4.5 the Assigned Software shall be subject to the Assigned Software Terms.]
- 23.5 [The Supplier hereby grants, or shall procure the direct grant, to the Customer (and the Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to use the Supplier Pre-Existing IPR and the Documentation so far as is necessary for the Customer to receive the Services and make use of the Leased Goods and any services and/or goods provided by the Replacement Supplier.
- 23.6 The Supplier hereby grants to the Customer a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to copy the Documentation for any purpose connected with the receipt of the Goods and Services or that is incidental to the exercise of the rights granted to the Customer under this Lease Agreement.
- 23.7 The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs or shall procure that the first owner of the Project Specific IPRs assigns them to the Customer on the same basis. Such assignment shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Project Specific IPRs, as appropriate. The

Supplier shall waive or procure a waiver of any moral rights in the Project Specific IPRs assigned to the Customer under this Lease Agreement.

- 23.8 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under clause 21.7.
- 23.9 The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty free licence to use the Customer's Pre-Existing IPR, , Customer Data and the Project Specific IPRs during the Lease Agreement Period for the sole purpose of enabling the Supplier to provide the Services and supply the Goods. Such licence:
- 23.9.1 includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 24.6 (Confidentiality); and
- 23.9.2 is granted solely to the extent necessary for performing the Services and providing the Goods in accordance with this Lease Agreement. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 23.10 In the event of the termination or expiry of this Lease Agreement, the licence referred to in clause 23.9 and any sub-licence granted in accordance with clause 23.9.1 shall terminate automatically and the Supplier shall deliver to the Customer all material licensed to the Customer pursuant to clause 23.9 in the Supplier's possession or control.
- 23.11 Subject to clause 21.12 and clause 22.13 the Supplier shall ensure that no unlicensed software or open source software is interfaced with or embedded within any Customer Software or Specially Written Software.
- 23.12 Prior to using any third party IPRs in connection with the supply of the Services and/or provision of the Goods, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval ("**Request for Approval**"). The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Contract using the third party IPRs in the Request for Approval. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 23.13 Where the Supplier is granted Approval to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Customer a licence upon the terms informed to the Customer in the Request for Approval.
- 23.14 The Supplier shall on demand, during and after the Lease Agreement Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the

rights granted to the Customer pursuant to this Lease Agreement and/or the performance by the Supplier of the Services and/or supply of the Goods and/or Deliverables and/or the possession or use by the Customer of the Goods and/or Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:

- 23.14.1 items or materials based upon designs supplied by the Customer;
or
 - 23.14.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Lease Agreement.
- 23.15 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 23.15.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 23.15.2 shall take due and proper account of the interests of the Customer;
 - 23.15.1 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
 - 23.15.2 shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).
- 23.16 If a Claim is made in connection with the Lease Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:
- 23.16.1 modify the relevant part of the Services, Goods and/or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that:
 - 23.16.1.1 the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
 - 23.16.1.2 such substitution shall not increase the burden on the Customer; or
 - 23.16.1.3 the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
 - 23.16.1.4 there is no additional cost to the Customer; and

23.16.1.5 such modified or substituted goods and/or services items shall be acceptable to the Customer (such acceptance not to be unreasonably withheld); or

23.16.2 procure a licence to use and supply the Services, Goods and/or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer;

23.16.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations,

and in the event that the Supplier is unable to comply with clauses 23.16.1 or 21.16.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Lease Agreement with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Services, Goods and/or Deliverable that is subject to the Claim.

23.17 The Supplier's compliance with clause 23.16 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with clause 23.16.

23.18 In the event that a modification or substitution in accordance with clause 23.16.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with clause 21.16.2, the Customer shall be entitled to delete the relevant Service, Goods and/or Deliverable from the Lease Agreement.

23.19 If the Supplier elects to modify or replace an item pursuant to clause 21.16.1 or to procure a licence in accordance with clause 21.16.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Lease Agreement by written notice with immediate effect and, without prejudice to the indemnity set out in clause 21.14, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring and implementing and the substitute items.

23.20 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.

23.21 This clause 21 sets out the entire financial liability of the Supplier with regard to the infringement of any IPRs as a result of the provision of the Goods and Services hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise.

24. PROTECTION OF INFORMATION

24.1 Security Requirements

24.1.1 The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan

and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

- 24.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 24.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods and Services it may notify the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Lease Agreement Charges shall then be agreed in accordance with the procedure set out in clause 39.
- 24.1.4 Until and/or unless a change to the Lease Agreement Charges is agreed by the Customer pursuant to clause 39 the Supplier shall continue to perform the Services and provide the Goods in accordance with its existing obligations.

24.2 Malicious Software

- 24.2.1 The Supplier shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed between the Parties).
- 24.2.2 Notwithstanding clause 24.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 24.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 24.2.1 shall be borne by the Parties as follows:
 - 24.2.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
 - 24.2.3.2 by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).]

24.3 **Security of Premises**

- 24.3.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on the Customer's Premises and shall ensure that all Staff comply with such requirements.
- 24.3.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

24.4 **Customer Data**

- 24.4.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 24.4.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Lease Agreement or as otherwise expressly Approved by the Customer.
- 24.4.3 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Lease Agreement (if any) and in any event as specified by the Customer from time to time in writing.
- 24.4.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 24.4.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 24.4.6 [The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using [Security Policy Framework and IA Policy, taking into account guidance on Risk Management and Accreditation of Information Systems] [HMG IA Standard Number 2 (Risk Management and Accreditation of Information Systems)] and the Supplier shall review such accreditation status at least once in each calendar Year to assess whether material changes have occurred which could alter the original accreditation decision. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.

[Guidance: delete 23.4.6 if there is no critical data involved. If above clause is retained the following definitions will need to be added IA Policy, Risk Management and Accreditation of Information Systems.]

- 24.4.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
- 24.4.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - 24.4.7.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 24.4.8 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

24.5 Protection of Personal Data

- 24.5.1 With respect to the Parties' rights and obligations under this Lease Agreement, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.
- 24.5.2 The Supplier shall:
- 24.5.2.1 Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Lease Agreement or as otherwise notified by the Customer to the Supplier during the Lease Agreement Period);
 - 24.5.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services and Goods or as is required by Law or any Regulatory Body;
 - 24.5.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 24.5.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 24.5.2.5 obtain Approval in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services and Goods;
- 24.5.2.6 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 24.5;
- 24.5.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 24.5.2.8 notify the Customer (within five (5) Working Days) if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 24.5.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
 - (a) providing the Customer with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - (c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer;
- 24.5.2.10 permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Lease Agreement;

24.5.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer); and

24.5.2.12 [not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Supplier (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraph (b) to (d) below;
- (b) the Supplier shall set out in its request for a Variation details of the following:
 - (i) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (ii) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - (iii) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- (c) in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or

overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval of such Process and/or transfer any Personal Data outside the European Economic Area; and

- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Lease Agreement or a separate data processing agreement between the parties; and
 - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).]

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

24.5.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

24.5.5 The Supplier shall, at all times during and after the Lease Agreement Period, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 22 except and to the extent

that such liabilities have resulted directly from the Customer's instructions.

24.6 Confidentiality

24.6.1 Except to the extent set out in this clause 24.6 or where disclosure is expressly permitted elsewhere in this Lease Agreement, each Party shall:

24.6.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

24.6.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

24.6.2 Clause 24.6.1 shall not apply to the extent that:

24.6.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 24.8 (Freedom of Information);

24.6.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

24.6.2.3 such information was obtained from a third party without obligation of confidentiality;

24.6.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Lease Agreement; or

24.6.2.5 it is independently developed without access to the other Party's Confidential Information.

24.6.3 The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and Goods and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

24.6.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Lease Agreement.

24.6.5 At the written request of the Customer, the Supplier shall procure that those members of Staff identified in the Customer's notice sign

a confidentiality undertaking prior to commencing any work in accordance with this Lease Agreement.

- 24.6.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Lease Agreement, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 24.6.7 Nothing in this Lease Agreement shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under clause 8.2):
- 24.6.7.1 to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
 - 24.6.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
 - 24.6.7.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 24.6.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 24.6.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 24.6.7 is made aware of the Customer's obligations of confidentiality.
- 24.6.9 Nothing in this clause 24.6 shall prevent either party from using any techniques, ideas or Know-How gained during the performance of the Lease Agreement in the course of its normal business to the

extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

24.6.10 In the event that the Supplier fails to comply with clause 22.6.1 to clause 22.6.6, the Customer reserves the right to terminate this Lease Agreement with immediate effect by notice in writing.

24.6.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Lease Agreement, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

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

24.7.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:

24.7.1.1 the Official Secrets Acts 1911 to 1989; and

24.7.1.2 Section 182 of the Finance Act 1989.

24.7.2 In the event that the Supplier or its Staff fail to comply with this clause 23, the Customer reserves the right to terminate the Lease Agreement by giving notice in writing to the Supplier.

24.8 Freedom of Information

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

24.8.2 The Supplier shall and shall procure that its Sub-contractors shall:

24.8.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

24.8.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

24.8.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 24.8.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Lease Agreement or any other Lease Agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 24.8.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 24.8.5 The Supplier acknowledges that (notwithstanding the provisions of clause 24.6) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Goods and Services:
- 24.8.5.1 in certain circumstances without consulting the Supplier;
or
- 24.8.5.2 following consultation with the Supplier and having taken their views into account,
- provided always that where clause 24.8.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 24.8.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of this Lease Agreement and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.
- 24.8.7 The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 24.8.5.

24.9 Transparency

- 24.9.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Lease Agreement is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Lease Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 24.9.2 Notwithstanding any other term of this Lease Agreement, the Supplier hereby gives his consent for the Customer to publish the Lease Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the

FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

24.9.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

24.9.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Lease Agreement.

25. WARRANTIES AND REPRESENTATIONS

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

25.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Lease Agreement;

25.1.2 the Lease Agreement is executed by a duly authorised representative of the Supplier;

25.1.3 in entering the Lease Agreement it has not committed any Fraud;

25.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

25.1.5 this Lease Agreement shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;

25.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response for the Goods and Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Lease Agreement and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the PQQ Response and Tender shall be deemed repeated in this Lease Agreement;

25.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Lease Agreement;

25.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Lease Agreement;

25.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up

of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

- 25.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Lease Agreement and shall maintain the same in full force and effect;

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

- 25.2.1 the Goods and Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

- 25.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

- 25.2.3 the Goods and Services are and will continue to be during the Lease Agreement Period:

- 25.2.3.1 of satisfactory quality; and

- 25.2.3.2 in conformance with the relevant specifications set out in this Lease Agreement, the relevant Order and (if applicable) the manufacturer's specifications and documentation;

- 25.2.4 in the three (3) Years prior to the Commencement Date:

- 25.2.4.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

- 25.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

- 25.2.4.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Lease Agreement; and

- 25.2.4.4 for the Lease Agreement Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

- 25.3 For the avoidance of doubt, the fact that any provision within this Lease Agreement is expressed as a warranty shall not preclude any right of

termination the Customer may have in respect of breach of that provision by the Supplier.

25.4 The Supplier acknowledges and agrees that:

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

26. LIABILITIES

26.1 Liability

- 26.1.1 Nothing in the Lease Agreement shall be construed to limit or exclude either Party's liability for:
 - 26.1.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 26.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
 - 26.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 26.1.1.4 any claim under clause 25.1;
 - 26.1.1.5 any claim under the indemnity in clauses 13.2.5, [16 to 18 (inclusive), 23.14, 22.5.2 or in respect or a breach of clause 24.6; or
 - 26.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 26.1.2 Subject to clause 24.1.4 and clause 26.1.5 the Supplier shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non supply, of the Goods and Services or the performance or non-performance by the Supplier of its obligations under the Lease Agreement or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 26.1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the

negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Lease Agreement.

26.1.4 Subject always to clause 26.1.1 and clause 24.1.5, the aggregate liability of either Party for each Year of this Lease Agreement under or in relation to this Lease Agreement:

26.1.4.1 all defaults resulting in direct loss to the property of the other Party shall be subject to the financial limits set out in paragraph 8.1 of the Order Form; and

26.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equivalent to one hundred and twenty five percent (125%) of the Charges paid or payable to the Supplier in the year of this Lease Agreement, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) Months of the Term, the amount estimated to be paid in the first twelve (12) Months of the Term) and subject to the financial limits set out in paragraph 8.2 of the Order Form.

26.1.5 Subject to clauses 26.1.1 and 26.1.6, in no event shall either Party be liable to the other for any:

26.1.5.1 loss of profits;

26.1.5.2 loss of business;

26.1.5.3 loss of revenue;

26.1.5.4 loss of or damage to goodwill;

26.1.5.5 loss of savings (whether anticipated or otherwise); and/or

26.1.5.6 any indirect, special or consequential loss or damage.

26.1.6 Subject always to the provisions of clauses 24.1.1, 24.1.2, 24.1.4 and 24.1.5, the provisions of 24.1.7 shall not be taken as limiting the right of the Customer to recover as a direct loss:

26.1.6.1 any additional operational and/or administrative expenses arising from the Supplier's Default;

26.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default;

26.1.6.3 the additional cost of procuring replacement services for the remainder of the Lease Agreement Period following

termination of the Lease Agreement as a result of a Default by the Supplier; and

26.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.

26.1.7 Nothing in the Lease Agreement shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Lease Agreement or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

26.2 Insurance

26.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Lease Agreement, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in paragraph 9 of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Lease Agreement Period and for the Minimum Insurance Period.

26.2.2 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with paragraph 9 of the Order Form.

26.2.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause 24 and paragraph 9 of the Order Form or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

26.2.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Lease Agreement the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

26.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Lease Agreement. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in clause 26.1.2.

26.2.6 The Supplier shall effect and maintain a professional indemnity insurance policy during the Lease Agreement Period in accordance with paragraph 9 of the Order Form and shall ensure that all agents,

professional consultants and sub-contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Lease Agreement Period in accordance with paragraph 9 of the Order Form.

- 26.2.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

26.3 Taxation, National Insurance and Employment Liability

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

27. TERMINATION

27.1 Termination on insolvency

- 27.1.1 The Customer may terminate the Lease Agreement with immediate effect by giving notice in writing to the Supplier where the Supplier is a company and in respect of the Supplier:
- 27.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 27.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 27.1.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

- 27.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 27.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 27.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986 ; or
 - 27.1.1.7 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 27.1.1.8 any event similar to those listed in clause 27.1.1.1 to 27.1.1.7 occurs under the law of any other jurisdiction.
- 27.1.2 The Customer may terminate the Lease Agreement with immediate effect by notice in writing where the Supplier is an individual and:
- 27.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
 - 27.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
 - 27.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 27.1.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
 - 27.1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or
 - 27.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

- 27.1.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

27.2 Termination on Change of Control

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

- 27.2.1.1 being notified that a Change of Control has occurred or is planned or in contemplation; or

- 27.2.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

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

27.3 Termination relating to Guarantee

- 27.3.1 Where the Supplier has procured a Guarantee pursuant to clause 5, the Customer may terminate the Lease Agreement with immediate effect if:

- 27.3.1.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

- 27.3.1.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

- 27.3.1.3 any of the events set out in clauses 27.1.1.1 to 27.1.1.8 occurs in respect of the Guarantor; or

- 27.3.1.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever,

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

27.4 Termination on Default

27.4.1 The Customer may terminate the Lease Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a Default and if:

27.4.1.1 the Supplier has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

27.4.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or

27.4.1.3 the Default is a Material Breach of the Lease Agreement.

27.4.2 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Lease Agreement is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Supplier.

27.4.3 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the Undisputed Sums Time Period, the Supplier may terminate the Lease Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 15.3 (Recovery of Sums Due).

27.5 Termination without Cause

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

27.6 Termination of Framework Agreement

The Customer may terminate the Lease Agreement by giving written notice to the Supplier with immediate effect if the Framework Agreement is fully or partly terminated for any reason whatsoever other than the termination of the Framework Agreement by the Authority under Clause 27.14 of the Framework Agreement.

27.7 Termination on Financial Standing

The Customer may terminate this Lease Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- 27.7.1 adversely impacts on the Supplier's ability to supply the Goods and Services under this Lease Agreement; or
- 27.7.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and Services under this Lease Agreement.

27.8 Termination on Audit

The Customer may terminate this Lease Agreement by serving notice in writing with effect from the date specified in such notice if the Supplier commits a Default of clauses 31.1 to and 31.5 and clause 31.7 (Records and Audit Access).

27.9 Termination in relation to Benchmarking

The Customer may terminate this Lease Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses or fails to comply with its obligations as set out in [Schedule 7 of the Framework Agreement] (Continuous Improvement and Benchmarking).

27.10 Partial Termination

If the Customer is entitled to terminate this Lease Agreement pursuant to this clause 25, it may (at its sole discretion) terminate all or part of this Lease Agreement.

28. CONSEQUENCES OF EXPIRY OR TERMINATION

- 28.1 Where the Customer terminates the Lease Agreement under clauses 25.3 (Guarantee), 25.4 (Termination on Default), 25.7 (Financial Standing), 25.8 (Audit), 25.9 (Benchmarking) and then makes other arrangements for the supply of Leased Goods and/or the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Lease Agreement Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Lease Agreement is terminated under clauses 25.3, 27.4, 25.7, 25.8 and 25.9, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.
- 28.2 Subject to clause 26, where the Customer terminates the Lease Agreement under clause 27.5 (Termination without Cause), the Customer shall:
 - 28.2.1 in respect of the Leased Goods that are no longer required by the Customer the customer shall pay to the Supplier upon termination:
 - 28.2.1.1 all arrears of Rentals;
 - 28.2.1.2 the sum of all the Rentals that would (but for the termination) have been due during the remainder of the Term each discounted at a rate of at least 10% in respect of the period between the date of actual payment and the date when the Rentals would have become due.

- 28.2.2 in respect of the Services that are no longer required by the Customer, indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause
- 28.3 The Customer shall not be liable under clause 28.2 to pay any sum which:
- 28.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- 28.3.2 when added to any sums paid or due to the Supplier under the Lease Agreement, exceeds the total sum that would have been payable to the Supplier if the Lease Agreement had not been terminated prior to the expiry of the Lease Agreement Period.
- 28.4 On the termination of the Lease Agreement for any reason, the Supplier shall:
- 28.4.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Goods and Services;
- 28.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
- 28.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
- 28.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under clause 7.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
- 28.4.5 transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the Leased Goods and/or contracts listed in the Exit Plan as are notified to it by the Supplier and/or the Customer in return for payment of the costs (if any) set

- out in the Exit Plan in respect of such Leased Goods and/or contracts;
- 28.4.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress in accordance with the Exit Plan, or if no Exit Plan has been agreed, provide such assistance and co-operation as the Customer may require;
- 28.4.7 return to the Customer any sums prepaid in respect of the Goods and Services not provided by the date of expiry or termination (howsoever arising); and
- 28.4.8 promptly provide all information concerning the provision of the Goods and Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 28.5 If the Supplier fails to comply with clause 28.4.1 and 28.4.8, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-contractors where any such items may be held.
- 28.6 Where the end of the Lease Agreement Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 28.4.5 and 28.4.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 28.7 At the end of the Lease Agreement Period (howsoever arising) the licence granted pursuant to clause 14.2.1 shall automatically terminate without the need to serve notice.
- 28.8 Save as otherwise expressly provided in the Lease Agreement:
- 28.8.1 termination or expiry of the Lease Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Lease Agreement prior to termination or expiration and nothing in the Lease Agreement shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 28.8.2 termination of the Lease Agreement shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under clauses 15.2 (Payment and VAT), 15.3 (Recovery of Sums Due), 23 (Intellectual Property Rights), 24.5 (Protection of Personal Data), 24.6 (Confidentiality), 24.7 (Official Secrets Acts 1911 to 1989), 24.8 (Freedom of Information), 26 (Liabilities), 28 (Consequences of Expiry or Termination), 32 (Prevention of Bribery and Corruption), 33 (Records and Audit Access), 39 (Cumulative

Remedies), 45 (Conflicts of Interest), 33 (Prevention of Fraud), 45 (The Contracts (Rights of Third parties Act 1999) and 48.1 (Governing Law and Jurisdiction).

29. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 29.1 The Supplier shall not make any press announcements or publicise the Lease Agreement in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this clause 29. Any such press announcements or publicity proposed under this clause 29.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 29.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Lease Agreement in accordance with any legal obligation upon the Customer, including any examination of the Lease Agreement by the Auditor.
- 29.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

30. HEALTH AND SAFETY

- 30.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Lease Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under the Lease Agreement.
- 30.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 30.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Lease Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 30.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and Services under the Lease Agreement.
- 30.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

31. ENVIRONMENTAL REQUIREMENTS

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

32. PREVENTION OF BRIBERY AND CORRUPTION

32.1 The Supplier shall not:

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

32.1.2 engage in and shall procure that all Supplier's Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf shall not commit, in connection with this Lease Agreement, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and

32.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

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

32.2.1 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Lease Agreement; and

32.2.2 entered into this Lease Agreement with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Lease Agreement, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Lease Agreement;

32.3 The Supplier shall:

32.3.1 in relation to this Lease Agreement, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

32.3.2 immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this clause 30;

- 32.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause 30 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
 - 32.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Lease Agreement compliance with this clause 30. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;
 - 32.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-contractors, or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 32.4 If the Supplier, its Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:
- 32.4.1 this clause 30; or
 - 32.4.2 the Bribery Act 2010 in relation to this Lease Agreement or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Lease Agreement,
- the Customer shall be entitled to terminate this Lease Agreement by written notice with immediate effect.
- 32.5 Without prejudice to its other rights and remedies under this clause 30, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:
- 32.5.1 the amount of value of any such gift, consideration or commission; and
 - 32.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 30.

33. RECORDS AND AUDIT ACCESS

- 33.1 The Supplier shall keep and maintain for [seven (7)] Years after the date of termination or expiry (whichever is the earlier) of the Lease Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Lease Agreement including the Goods and Services provided under it, and the amounts paid by the Customer.

- 33.2 The Supplier shall keep the records and accounts referred to in clause 33.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 33.3 The Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in clause 31.2 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:
- 33.3.1 to verify the accuracy of the Lease Agreement Price (and proposed or actual variations to them in accordance with this Lease Agreement), and/or the costs of all Supplier (including Sub-contractors) of the Services;
 - 33.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
 - 33.3.3 to review the Supplier's compliance with the DPA in accordance with this Lease Agreement and any other Laws;
 - 33.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in schedule 7 of the Framework Agreement and clause 9 of the Lease Agreement;
 - 33.3.5 to review the Supplier's compliance with its security obligations set out in clause 22;
 - 33.3.6 to review any books of account kept by the Supplier in connection with the provision of the Service;
 - 33.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - 33.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
 - 33.3.9 to ensure that the Supplier is complying with its obligations under this Lease Agreement.
- 33.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 33.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Lease Agreement Period and for a period of [seven (7)] Years after termination or expiry of the Lease Agreement Period or the last Lease Agreement (whichever is the later) to the Customer and/or its Auditors.

- 33.6 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Lease Agreement Period and for the period specified in paragraph 12 of the Order Form after the date of termination or expiry of the Lease Agreement to the Customer and the Auditor.
- 33.7 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services or supply of Goods save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 33.8 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:
- 33.8.1 all reasonable information requested by the Customer within the scope of the audit;
 - 33.8.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and Services; and
 - 33.8.3 access to the Staff.
- 33.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 31, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

34. DISCRIMINATION

- 34.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 34.2 The Supplier shall take all reasonable steps to secure the observance of clause 34.1 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Lease Agreement.

35. PREVENTION OF FRAUD

- 35.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 35.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

- 35.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:
- 35.3.1 terminate the Lease Agreement with immediate effect by giving the Supplier notice in writing; and/or
 - 35.3.2 recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 33 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and Services and any additional expenditure incurred by the Customer throughout the remainder of the Lease Agreement Period.

36. TRANSFER AND SUB-CONTRACTING

- 36.1 Subject to clause 36.4, the Supplier shall not assign, novate, sub-contract or in any other way dispose of the Lease Agreement or any part of it without Approval. The Customer has consented to the engagement of the Sub-contractors listed in paragraph 3.4 of the Order Form.
- 36.2 The Supplier shall not substitute or remove a Sub-contractor or appoint an additional sub-contractor without the prior written consent of the Authority and the Customer. Notwithstanding any permitted sub-contract in accordance with this clause 34, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and the Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.
- 36.3 Sub-contracting any part of the Lease Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Lease Agreement. The Supplier shall supply such information about proposed Sub-contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 36.4 The Supplier may assign to a third party ("**the Assignee**") the right to receive payment of the Lease Agreement Charges or any part thereof due to the Supplier under this Lease Agreement (including any interest which the Customer incurs under clause 15.2.6). Any assignment under this clause shall be subject to:
- 36.4.1 reduction of any sums in respect of which the Customer exercises its right of recovery under clause 15.3;
 - 36.4.2 all related rights of the Customer under the contract in relation to the recovery of sums due but unpaid; and
 - 36.4.3 the Customer receiving notification under both clauses 36.5 and 36.6.

- 36.5 In the event that the Supplier assigns the right to receive the Lease Agreement Charges under clause 36.4, the Supplier or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 36.6 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 36.7 The provisions of clause 15.2 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Customer.
- 36.8 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 36.9 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 36.10 The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-contract shall include:
- 36.10.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-contract as if it were the Supplier;
 - 36.10.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Customer;
 - 36.10.3 a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in clause 24.6 (Confidentiality);
 - 36.10.4 a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to clauses 24.4 (Customer Data) and 24.5 (Protection of Personal Data);
 - 36.10.5 a provision requiring the Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to clause 32 (Prevention of Bribery and Corruption);
 - 36.10.6 require the Supplier to pay any undisputed sum due to the relevant sub-contractor within a specified period that does not exceed 30 days from the date the Supplier receives the sub-contractor's invoice; and
 - 36.10.7 a provision restricting the ability of the Sub-contractor to further sub-contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority.

- 36.11 If the Customer is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Goods and Services, then the Customer may:
- 36.11.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item.
- 36.12 If the Customer exercises the option pursuant to clause 36.11, then the Lease Agreement Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 36.13 Subject to clause 36.15, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Lease Agreement or any part thereof to:
- 36.13.1 any Contracting Authority; or
- 36.13.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- 36.13.3 any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Lease Agreement.
- 36.14 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to clause 36.15, affect the validity of the Lease Agreement. In such circumstances, the Lease Agreement shall bind and inure to the benefit of any successor body to the Customer.
- 36.15 If the rights and obligations under the Lease Agreement are assigned, novated or otherwise disposed of pursuant to clause 36.13 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "the **Transferee**"):
- 36.15.1 the rights of termination of the Customer in clauses 27.1 (Termination on insolvency) 25.2 (Termination on change of control) and 27.4 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- 36.15.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Lease Agreement or any part thereof with the previous consent in writing of the Supplier.
- 36.16 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Lease Agreement. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes

relating to the performance of the Supplier's obligations under the Lease Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- 36.17 For the purposes of clause 36.15 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Lease Agreement.

37. FORCE MAJEURE

- 37.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Lease Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Lease Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Lease Agreement for a period in excess of 6 Months, either Party may terminate the Lease Agreement with immediate effect by notice in writing to the other Party.
- 37.2 Any failure or delay by the Supplier in performing its obligations under the Lease Agreement which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 37.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 37.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 37.4 If an event of Force Majeure event affects the Services, the Customer may direct the Supplier to procure those Goods and/or Services from a third party service provider in which case the Supplier will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
- 37.5 The Supplier will not have the right to any payment from the Customer under this Lease Agreement where the Supplier is unable to provide the Goods and Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a replacement supplier pursuant to sub-clause 35.4, then the Customer will pay the Supplier (a) the Lease Agreement the difference between the Lease Agreement Price and the new supplier's costs if, in respect of the Goods and Services that are subject to Force Majeure, the new service provider's costs are greater than the Lease Agreement Price.

38. WAIVER

- 38.1 The failure of either Party to insist upon strict performance of any provision of the Lease Agreement, or the failure of either Party to exercise, or any delay in

exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Lease Agreement.

- 38.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 48 (Notices).
- 38.3 A waiver by either Party of any right or remedy arising from a breach of the Lease Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Lease Agreement.

39. CUMULATIVE REMEDIES

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

40. FURTHER ASSURANCES

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

41. VARIATION

- 41.1 Subject to the provisions of this clause 39, the Customer may request a variation to the Goods and Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "**Variation**".
- 41.2 The Customer may request a Variation by completing and sending the Variation form set out in schedule 1 ("**the Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 41.3 In the event that the Supplier is unable to provide the Variation to the Goods and Services or where the Parties are unable to agree a change to the Lease Agreement Charges, the Customer may:
 - 41.3.1 agree to continue to perform their obligations under the Lease Agreement without the Variation; or
 - 41.3.2 terminate the Lease Agreement with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

- 41.4 If the Parties agree the Variation and any variation in the Lease Agreement Charges, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Lease Agreement.

42. SEVERABILITY

- 42.1 If any provision of the Lease Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Lease Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.
- 42.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Lease Agreement, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

43. MISTAKES IN INFORMATION

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

44. SUPPLIER'S STATUS

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

45. CONFLICTS OF INTEREST

- 45.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Lease Agreement.
- 45.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 45.1 above arises or is reasonably foreseeable.
- 45.3 The Customer reserves the right to terminate the Lease Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Lease Agreement. The actions of the

Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- 45.4 This clause shall apply during the Lease Agreement Period and for a period of two (2) Years after expiry of the Lease Agreement Period.

46. ENTIRE AGREEMENT

- 46.1 This Lease Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 46.2 Each of the Parties acknowledges and agrees that in entering into the Lease Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Lease Agreement.
- 46.3 The Supplier acknowledges that it has:
- 46.3.1 entered into the Lease Agreement in reliance on its own due diligence alone; and
 - 46.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and Services in accordance with the terms of the Lease Agreement.
- 46.4 Nothing in clauses 46.1 and 46.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 46.5 The Lease Agreement may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

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

- 47.1 A person who is not a Party to the Lease Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- 47.2 The parties agree that the Contracts (Rights of Third Parties) Act 1999 (CRiTPA) shall apply to clauses 17, 18 and 19 to the extent necessary that any Former Supplier and Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Former Supplier and the Replacement Supplier by the Supplier under that clause 17, 18 and 19 in its own right pursuant to clause 1(1) of CRiTPA.

- 47.3 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Lease Agreement or any one or more clauses of it.

48. NOTICES

- 48.1 Except as otherwise expressly provided within the Lease Agreement, no notice or other communication from one Party to the other shall have any validity under the Lease Agreement unless made in writing by or on behalf of the Party sending the communication.
- 48.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 48.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 48.3 For the purposes of clause 48.2, the address, email address or fax number of each Party shall be the address, email address and fax number set out in the Order Form.
- 48.4 Either Party may change its address for service by serving a notice in accordance with this clause.

49. LEGISLATIVE CHANGE

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

50. DISPUTES AND LAW

50.1 Governing Law and Jurisdiction

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

50.2 Dispute Resolution

- 50.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Lease Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in paragraph 15.1 of the Order Form.

- 50.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 50.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 50.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 50.2.5 unless:
- 50.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 50.2.3.2 the Supplier does not agree to mediation.
- 50.2.4 The obligations of the Parties under the Lease Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Lease Agreement at all times.
- 50.2.5 The procedure for mediation is as follows:
- 50.2.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, [apply to the mediation provider specified in paragraph 11 of the Order Form to appoint a Mediator]/[apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator];
- 50.2.5.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider specified in paragraph 11 of the Order Form to provide guidance on a suitable procedure;
- 50.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 50.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

- 50.2.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Lease Agreement without the prior written consent of both Parties; and
- 50.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

SCHEDULE 2

SECURITY MANAGEMENT PLAN

[Guidance to customer: please see the guidance contained in the OGC ppn for further information on how this schedule is used.]

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

"Breach of Security"	in accordance with the security requirements in paragraph 2.7 of the Order Form and the Security Policy, the occurrence of: <ul style="list-style-type: none">(a) any unauthorised access to or use of the Services, the Premises, the Sites, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Lease Agreement; and/or(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Lease Agreement;
"ISMS"	The Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Services;
"Protectively Marked"	shall have the meaning as set out in the Security Policy Framework;
"Security Policy Framework"	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
"Security Tests"	shall have the meaning set out in paragraph 4.1 of this schedule 2;
"Statement of Applicability"	shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties [during the procurement phase].

1. INTRODUCTION

1.1 This schedule covers:

1.1.1 principles of protective security to be applied in delivering the Services;

1.1.2 [wider aspects of security relating to the Service];

- 1.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.1.4 the creation and maintenance of the Security Management Plan;
- 1.1.5 audit and testing of ISMS compliance with the security requirements (as set out in paragraph 2.7 of the Order Form);
- 1.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;
- 1.1.7 obligations in the event of actual, potential or attempted breaches of security.

2. PRINCIPLES OF SECURITY

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 2.2 The Supplier shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
 - 2.2.1 is in accordance with Good Industry Practice, Law and this Lease Agreement;
 - 2.2.2 complies with the Security Policy;
 - 2.2.3 [complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD)];
 - 2.2.4 meets any specific security threats to the ISMS;
 - 2.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 5 of this schedule;
 - 2.2.6 complies with the security requirements as set out in paragraph 2.7 of the Order Form; and
 - 2.2.7 complies with the Customer's ICT standards.
- 2.3 Subject to clause 21.1.3, the references to standards, guidance and policies set out in paragraph 2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 2.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

3. ISMS AND SECURITY MANAGEMENT PLAN

3.1 Introduction

- 3.1.1 The Supplier shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 2.2, be approved, by the Customer, tested in accordance with schedule 4, periodically updated and audited in accordance with ISO/IEC 27001.
- 3.1.2 The Supplier shall develop and maintain a Security Management Plan in accordance with this schedule to apply during the Lease Agreement Period.
- 3.1.3 The Supplier shall comply with its obligations set out in the Security Management Plan.
- 3.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Lease Agreement.

3.2 Development of the Security Management Plan

- 3.2.1 Within [20] Working Days after the Commencement Date and in accordance with paragraph 3.4 (Amendment and Revision), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 3.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 (Amendment and Revision), is approved by the Customer it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not approved by the Customer the Supplier shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Customer pursuant to this paragraph 3.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3.4 shall be deemed to be reasonable.

3.3 Content of the Security Management Plan

- 3.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this schedule (including the principles set out in paragraph 2.2);
- 3.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in paragraph 2.7 of the Order Form.
- 3.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this Lease Agreement which cover specific areas included within that standard.
- 3.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this schedule.

3.4 Amendment and Revision of the ISMS and Security Management Plan

- 3.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
 - 3.4.1.1 emerging changes in Good Industry Practice;
 - 3.4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
 - 3.4.1.3 any new perceived or changed security threats;
 - 3.4.1.4 any reasonable request by the Customer.
- 3.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review should include, without limitation:
 - 3.4.2.1 suggested improvements to the effectiveness of the ISMS;
 - 3.4.2.2 updates to the risk assessments;

- 3.4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
 - 3.4.2.4 suggested improvements in measuring the effectiveness of controls.
- 3.4.3 On receipt of the results of such reviews, the Customer will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.2.2.
- 3.4.4 Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a Customer request or change to the requirement set out in paragraph 2.7 of the Order Form or otherwise) shall be subject to the Variation Procedure and shall not be implemented until approved in writing by the Customer.

4. TESTING

- 4.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") on an [annual] basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.
- 4.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Lease Agreement, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services. If such tests adversely affect the Supplier's ability to deliver the Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential Breach of Security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's approval in accordance with paragraph 3.4.4, the Supplier shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or security requirements (as set out in paragraph 2.7 of the Order Form), the change to the ISMS or Security Management Plan shall be at no cost to the Customer.

5. COMPLIANCE WITH ISO/IEC 27001

- 5.1 [The Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within [12] months of the Commencement Date and shall maintain such certification for the duration of the Lease Agreement.]
- 5.2 [If certain parts of the ISMS do not conform to good industry practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement for certification in respect of the relevant parts.]
- 5.3 The Customer shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 5.4 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or in part.
- 5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

6. BREACH OF SECURITY

- 6.1 Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Supplier shall:
 - 6.2.1 immediately take all reasonable steps necessary to:
 - 6.2.1.1 remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
 - 6.2.1.2 prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response

to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Lease Agreement, then the Supplier shall be entitled to refer the matter to the Variation Procedure; and

- 6.2.2 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

SCHEDULE 3

PARENT COMPANY GUARANTEE

[☐]

[Guidance: Insert the name of the Guarantor]

- and -

[☐]

[Guidance: Insert the name of the Customer]

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) **[Guidance: Insert the name of the Guarantor]** [a company incorporated in England and Wales with number [] whose registered office is at **[Guidance: insert details of the Guarantor's registered office here]**] [a company incorporated under the laws of **[Guidance: insert country if not registered in England and Wales]**, registered in **[Guidance: insert country where registered if not in England and Wales]** with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]* ("**Guarantor**") in favour of
- (2) [] whose principal office is at [] ("**Beneficiary**").

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee the due performance by the Supplier of all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

"Authority" means the Minister for the Cabinet Office as successor to Lords Commissioner of Her Majesty's Treasury as represented by Government Procurement Service formerly Buying Solutions, whose principal office is at 9th Floor, The Capital, Old Hall Street, Liverpool L3;

"Guaranteed Agreement" means the agreement for the provision of the Goods and Services made between the Supplier and the Customer comprising of an Order Form dated [[]/[the same date as this Deed of Guarantee]] and the Lease Agreement Terms; and

[Guidance: Delete the appropriate clauses above depending on when the Order Form is dated]

"Guaranteed Obligations" means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed

Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales:]

4.1.2 [Facsimile Number:]

4.1.3 [For the Attention of:]

[Guidance: Relevant information to be inserted above]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
- 4.2.1 if delivered by hand, at the time of delivery; or
 - 4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
 - 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. RIGHTS OF SUBROGATION

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 6.1 of subrogation and indemnity;
- 6.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

6.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until the Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.

7. REPRESENTATIONS AND WARRANTIES

7.1 The Guarantor hereby represents and warrants to the Beneficiary that:

7.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

7.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

7.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including without limitation entry into and performance of a contract pursuant to clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:

7.1.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

7.1.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

7.1.3.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;

7.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

7.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

7.2 The Guarantor acknowledges and agrees that:

7.2.1 the warranties, representations and undertakings contained in this Deed of Guarantee are material and are designed to induce the Beneficiary into entering into the Guaranteed Agreement; and

7.2.2 the Beneficiary has been induced into entering into the Guaranteed Agreement and in doing so has relied upon on the warranties, representations and undertakings contained herein.

8. PAYMENTS AND SET-OFF

8.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

8.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to [4%] above the base rate of the Bank of England from time to time in force.

[Guidance: Government Procurement Service to confirm and insert the figure in respect of interest]

8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

9. GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

10. ASSIGNMENT

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

11. SEVERANCE

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

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

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that:

- 12.1 subject to clause 12.2, this Deed of Guarantee is not intended to, and does not, give to any person who is not a party to this Deed of Guarantee any rights to enforce any provisions contained in this Deed of Guarantee except for any person to whom the benefit of this Deed of Guarantee is assigned or transferred in accordance with clause 10; and
- 12.2 the Customer may, as agent and trustee for the Beneficiary, enforce on behalf of the Beneficiary any term of this Deed of Guarantee.

13. GOVERNING LAW

- 13.1 This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.
- 13.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 13.3 Nothing contained in this clause 13 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 13.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 13.5 ***[Guidance: The following provision can be included to deal with the appointment of an English process agent by a non English incorporated Guarantor]*** [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] ***[Guidance: A suitable alternative to be agreed if the Supplier's registered office is not in England or Wales]*** either at its registered office or on facsimile number ☐ ***[Guidance: Insert fax no.]*** from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.] ***[Guidance: This provision is to be completed by the Supplier where the registered office of the Guarantor is not situated in England and Wales.]***

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by)

[Insert name of the Guarantor] acting by **[Insert/print names]**

Director

Director/Secretary

SCHEDULE 4

TESTING

1. INTRODUCTION

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

2. TESTING OVERVIEW

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

3. TEST STRATEGY

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

4. TEST PLANS

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

- 4.2.2 a detailed procedure for the Tests to be carried out, including:
 - 4.2.2.1 the timetable for the Tests including start and end dates;
 - 4.2.2.2 the Testing mechanism;
 - 4.2.2.3 dates and methods by which the Customer can inspect Test results;
 - 4.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - 4.2.2.5 the process with which the Customer will review Test Issues and progress on a timely basis; and
 - 4.2.2.6 the re-Test procedure, the timetable and the resources which would be required for re-Testing.
- 4.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

5. TESTING

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

6. TEST ISSUES

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

7. TEST QUALITY AUDIT

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

detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

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

8. OUTCOME OF TESTING

- 8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
- 8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:
- 8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
- 8.2.2 the parties shall treat the failure as a Supplier Default.

APPENDIX

Satisfaction Certificate

To: [Supplier]

FROM: [Customer]

[Date]

Dear Sirs,

SATISFACTION CERTIFICATE

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

We refer to the agreement ("**Lease Agreement**") relating to the provision of the [] Goods and Services between the **[Guidance: Insert Customer's details]** ("**Customer**") and **[Guidance: Insert Supplier's details and the date of the Lease Agreement]** ("**Supplier**") dated [] [] [].

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

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

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

SCHEDULE 5

DISASTER RECOVERY AND BUSINESS CONTINUITY

1. PURPOSE OF THIS SCHEDULE

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

2. DEVELOPMENT OF BCDR PLAN

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

3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 The BCDR Plan shall:
 - 3.1.1 set out how its business continuity and disaster recovery elements link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services;
 - 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Supplier with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the

Customer and any of its other Related Suppliers as notified to the Supplier by the Customer from time to time;

- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
- 3.1.6 contain a risk analysis, including:
 - 3.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - 3.1.6.2 identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - 3.1.6.3 identification of risks arising from the interaction of the Services with the services provided by a Related Supplier ; and
 - 3.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Customer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than [] of data loss and to preserve data integrity;

[Guidance: Consider what an acceptable percentage of data loss would be and insert above.]
- 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.

3.2 The BCDR Plan shall be designed so as to ensure that:

- 3.2.1 the Services are provided in accordance with the Lease Agreement at all times during and after the invocation of the BCDR Plan;
- 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;

- 3.2.3 it aligns with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Lease Agreement Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Lease Agreement.

4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Customer expressly states otherwise in writing:
 - 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - 5.3.1 the technical design and build specification of the Disaster Recovery System;

- 5.3.2 details of the procedures and processes to be put in place by the Supplier and any Sub-contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - 5.3.2.1 data centre and disaster recovery site audits;
 - 5.3.2.2 backup methodology and details of the Supplier's approach to data back-up and data verification;
 - 5.3.2.3 identification of all potential disaster scenarios;
 - 5.3.2.4 risk analysis;
 - 5.3.2.5 documentation of processes and procedures;
 - 5.3.2.6 hardware configuration details;
 - 5.3.2.7 network planning including details of all relevant data networks and communication links;
 - 5.3.2.8 invocation rules;
 - 5.3.2.9 Service recovery procedures;
 - 5.3.2.10 steps to be taken upon Service resumption to address any prevailing effect of the Service failure or disruption;
- 5.3.3 any applicable Service Levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls (to any disaster recovery sites used by the Supplier or any Sub-contractor in relation to its obligations pursuant to this schedule 5); and
- 5.3.6 testing and management arrangements.

6. PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall provide a draft of the BCDR Plan within 20 Working Days following the Commencement Date.
- 6.2 The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
 - 6.2.1 on a regular basis and as a minimum once every six calendar months;
 - 6.2.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this schedule; and

- 6.2.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.2.1 and 6.2.2 of this schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both parties for any such additional reviews will be met by the Customer.
- 6.3 Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to the occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**Review Report**") setting out:
- 6.3.1 the findings of the review;
- 6.3.2 any changes in the risk profile associated with the Services; and
- 6.3.3 the Supplier's proposals ("**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 6.4 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

7. TESTING OF THE BCDR PLAN

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every year during the Lease Agreement Period). Subject to paragraph 7.2, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Customer requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer

unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

- 7.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 7.4 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Customer a report setting out:
 - 7.6.1 the outcome of the test;
 - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.6.3 the Supplier's proposals for remedying any such failures.
- 7.7 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this schedule 5 or otherwise.
- 7.9 The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of the Services.

8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

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

SCHEDULE 6

SERVICE LEVELS AND SERVICE CREDITS

1. SCOPE

1.1 This schedule 6 sets out the Service Levels which the Supplier is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Supplier's performance of the Services by the Supplier will be monitored. This schedule comprises:

1.1.1 Part A: Service Levels;

1.1.2 Appendix to Part A - Service Levels and Service Credits; and

1.1.3 Part B: Performance Monitoring.

PART A

Service Levels

2. PRINCIPAL POINTS

2.1 The objectives of the Service Levels and Service Credits are to:

2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;

2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of Service for which it has contracted to deliver; and

2.1.3 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

3. SERVICE LEVELS

3.1 The Appendix to this Part A of this schedule sets out Service Levels the performance of which the parties have agreed to measure.

3.2 The Supplier shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of part B of this schedule 6.

3.3 If the level of performance of the Supplier of any element of the Services during Lease Agreement Period:

3.3.1 fails to achieve a Service Level in respect of each element of the Service, then the Customer shall make a deduction from the Lease Agreement Charges in accordance with Appendix A to this schedule 6 Part A; or

3.3.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Lease Agreement pursuant to clause 5.19.

APPENDIX TO PART A

Service Levels and Severity Levels

		Level achieved			
Service Level		60-70%	71-90%	91-95%	96-100%
1.	The machine must be functional from [REDACTED]				100% requirement
2.	Training MUST be provided to 7 PSNI employees prior to the 'Switch On' date				100% requirement
3.					
4.					

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

Formula - 100% - % of Service Level achieved = x% of the Lease Agreement Charges to be deducted from the next invoice payable by the Customer.

Worked example - 100% (eg Service Level requirement for data accuracy) - 75% (eg accuracy of data) = 25% of the Lease Agreement Charges to be deducted from the next invoice payable by the Customer

PART B

Performance Monitoring

1. PRINCIPAL POINTS

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

2. REPORTING OF SERVICE FAILURES

The Customer shall report all failures to achieve Service Levels and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
 - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant period;
 - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that period;
 - 3.1.3 any Critical Service Failures and details in relation thereto;
 - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 3.1.6 such other details as the Customer may reasonably require from time to time.
- 3.2 The parties shall attend meetings to discuss Service Level reports ("Performance Review Meetings") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review

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

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

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Lease Agreement.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to clause 8.

SCHEDULE 7

SOFTWARE TERMS

1. BRONZE LICENCE TERMS

- 1.1 Each licence granted under the Bronze Licence Terms shall be for the Contract Period, royalty free and non-exclusive and shall allow the Customer to Use the software.
- 1.2 The Customer may sub-license the rights granted to it pursuant to paragraph 1.1 to a third party provided that:
 - 1.2.1 the sub-licence only authorises the third party to Use the software for the benefit of the Customer; and
 - 1.2.2 the third party has entered into a confidentiality undertaking with the Customer.
- 1.3 The Customer may copy the software licensed pursuant to paragraph 1.1 above in order to create an archival copy and a back-up copy of it. When copying such software, the Customer shall include the original machine readable copyright notice, and a label affixed to the media identifying the software and stating: "This medium contains an authorised copy of copyrighted software which is the property of [*name of owner*]."
- 1.4 The Customer may:
 - 1.4.1 assign, novate or otherwise dispose of its rights and obligations licensed under the Bronze Licence Terms to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer; or
 - 1.4.2 transfer the licences granted pursuant to this Contract to other machines or users within the Customer.
- 1.5 Any change in the legal status of the Customer which means that it ceases to be a Contracting Authority shall not affect the validity of any licence granted under the Bronze Licence Terms. If the Customer ceases to be a Contracting Authority, the Bronze Licence Terms shall be binding on any successor body to the Customer.
- 1.6 At any time during the Contract Period, the Supplier or third party licensor (as the case may be) may terminate a licence granted under the Bronze Licence Terms with 30 days notice in writing (or such other period as agreed by the parties) if:
 - 1.6.1 the Customer uses the software for any purpose not expressly permitted by the Bronze Licence Terms or the Contract; or
 - 1.6.2 the Customer commits any material breach of the Bronze Licence Terms which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier or third party licensor (as the case

may be) giving the Customer written notice specifying the breach and requiring its remedy.

2. SILVER LICENCE TERMS

2.1 Each licence granted under the Silver Licence Terms pursuant to clause shall be on the same terms as paragraph 1 above (with the appropriate changes) as supplemented and amended by the following provisions:

2.1.1 the term of the licence shall be perpetual and shall include the right for any Replacement Supplier to Use the software;

2.1.2 the right to grant sub-licenses shall include the right to sub-licence to any Replacement Supplier; and

2.1.3 the licence shall survive the termination or expiry of the Contract.

3. GOLD LICENCE TERMS

3.1 Each licence granted under the Gold Licence Terms pursuant to paragraph shall be on the same terms as paragraph 2 above (with the appropriate changes including, for the avoidance of doubt, change in the meaning of "Use" to reflect the fact that it relates to Gold Software) as supplemented and amended by the following provisions:

3.1.1 the licence shall be irrevocable and shall include the right to use the Source Code in the Gold Software;

3.1.2 the right to grant sub-licences shall not be subject to any provisos or restrictions;

3.1.3 the licence shall not include a right for the Customer, or any person on behalf of the Customer, to:

3.1.3.1 provide a copy of the software to any person for money or for other valuable consideration;

3.1.3.2 Use the software as an integral part of any product which is supplied to any person for money or for other valuable consideration;

3.1.3.3 Use the software in the development of any product that competes with those of the Supplier; and

3.1.3.4 to exploit commercially the software.

4. COTS LICENCE TERMS

Each licence granted under the COTS Licence Terms pursuant to paragraph shall be on the same terms as paragraph 2 above (with the appropriate changes) as supplemented and amended by the following provisions:

4.1 if so requested by the Customer, the Supplier shall procure that the third party licensor in respect of the COTS Software directly grants to the Customer and

each Replacement Supplier a direct licence of the COTS software on the same terms as Silver Licence Terms.

5. ASSIGNED SOFTWARE TERMS

- 5.1 The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Assigned Software or shall procure that the first owner of the Assigned Software assigns it to the Customer on the same basis.
- 5.2 The assignment under paragraph 5.1 shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Assigned Software, as appropriate.
- 5.3 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under this Contract.
- 5.4 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under paragraph 5.1 or shall procure that the owner of the Assigned Software does so on the same basis.

SCHEDULE 8

EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS

1. INTRODUCTION

- 1.1. This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Lease Agreement and the transfer of service provision to a Replacement Supplier.
- 1.2. The objectives of the Exit Planning and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Goods and Services from the Supplier to a Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Lease Agreement.

2. EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS

- 2.1. The Supplier agrees to indemnify and keep the Customer fully indemnified for itself and on behalf of any Replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Customer by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Goods and Services.

3. EXIT PLAN

- 3.1. Further to clause 6, the Customer shall review the Exit Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the Exit Plan. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed Exit Plan shall be signed as approved by each party.
- 3.2. The Exit Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Goods and Services. The Supplier shall ensure that the Exit Plan shall include as a minimum:
 - 3.1.1 a detailed description of how any arrangements for Leased Goods and/or Services will be ceased and transferred to the Customer and/or the Replacement Supplier as the case may be;
 - 3.1.2 details of the management structure to be employed by the Supplier to effectively transfer the Services to the Customer and/or Replacement Supplier as the case may be;
 - 3.1.3 details of how relevant knowledge will be transferred to the Customer and/or the Replacement Supplier; and
 - 3.1.4 details of Leased Goods and contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon expiry or termination of the Lease Agreement together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 3.1.5 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision

- of the Goods and Services following the expiry or termination (howsoever arising) of this Lease Agreement charged at rates agreed between the parties at that time;
- 3.1.6 proposals for providing the Customer or a Replacement Supplier copies of all documentation:
 - 3.1.6.1 used in the provision of the Goods and Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - 3.1.6.2 relating to the use and operation of the Goods and Services;
 - 3.1.7 proposals for the methods of transfer of the Goods and Services to the Customer or a Replacement Supplier;
 - 3.1.8 proposals for the assignment or novation of all Goods and Services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the Goods and Services;
 - 3.1.9 proposals for the identification and return of all Property in the possession of and/or control of the Supplier or any third party (including any Sub-contractor);
 - 3.1.10 proposals for the disposal of any redundant Goods and Services and materials; and
 - 3.1.11 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly hand over of the provision of the Goods and Services.
- 3.3. in the event that any Leased Goods are to be transferred to the Replacement Supplier, the Supplier shall ensure that such transfer occurs seamlessly and in an orderly manner without causing any disruption to the provision of the Services to the Customer and that any such transfer is effected by the Supplier and Replacement Supplier in accordance with Law (together with any applicable regulations);
- 3.4. where a Replacement Supplier determines that any Leased Goods must be replaced to enable it to perform the Services, the Supplier shall liaise with the Replacement Supplier to co-ordinate the removal of the Leased Goods with the Replacement Supplier's installation of replacement goods and in such circumstances the Supplier shall ensure that the removal and replacement of the Leased Goods:
- 3.4.1 does not cause any damage to the Premises or any of the Customer's equipment (as set out in paragraph 6.2 of the Order Form) or other property of the Customer to the fullest extent that the Supplier is able;
 - 3.4.2 occurs seamlessly and in an orderly manner without causing any disruption to the provision of the Services to the Customer; and
 - 3.4.3 is effected by the Supplier and Replacement Supplier in accordance with Law and any applicable regulations.
- 3.5. The Exit Plan shall be reviewed and updated by the Supplier. In this regard, the Supplier shall provide a revised version of the Exit Plan to the Customer on or before 31 July and 31st January each year (or more frequently as may be agreed between the Parties). The revised Exit Plan shall be reviewed and agreed in accordance with the provisions of paragraph [3.1] of this Schedule.

4. ASSISTANCE ON EXPIRY OR TERMINATION

- 4.1. In the event that this Lease Agreement expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods and Services to a Replacement Supplier including as set out in the Exit Plan.

5. PRE-EXIT OBLIGATIONS

- 5.1. The Supplier agrees that, subject to compliance with the Data Protection Legislation:

- 5.1.1. within twenty (20) Working Days of the earliest of:

5.1.1.1. receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or

5.1.1.2. receipt of the giving of notice of early termination of this Lease Agreement or any part thereof; or

5.1.1.3. the date which is six (6) Months before the due expiry date of this Lease Agreement,

it shall provide a list of those of its, its Personnel, or its Sub-Contractors', who are wholly or mainly assigned to the provision of the Goods and Services which the Supplier believes will transfer to the Customer or the Replacement Supplier (as the case may be), together with Staffing Information in relation to such employees;

- 5.1.2. at least ten (10) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer for itself or on behalf of any Replacement Supplier (as the case may be) a final list of employees which shall transfer under TUPE (the “**Transferring Supplier Employees**”) and any updated Staffing Information in relation to such Transferring Supplier Employees; and

- 5.1.3. the Customer shall be permitted to use and disclose information provided by the Supplier under paragraph 5 of this Schedule for informing any tenderer or other prospective Replacement Supplier.

- 5.2. The Supplier warrants, for the benefit of the Customer and any Replacement Supplier, that the information provided under paragraph 5 of this Schedule shall be complete, true and accurate.

- 5.3. From the date of the earliest event referred to in paragraphs 5.1.1.1 to 5.1.1.3 of this Schedule, the Supplier agrees that it shall not, and agrees to procure that its Sub-Contractors shall not without the prior Approval of the Customer in respect of those employees engaged in the provision of the Goods and Services:

5.3.1. increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or

5.3.2. replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or

5.3.3. make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

- 5.4. Within seven (7) Working Days following the subsequent Service Transfer Date, the Supplier will provide to the Customer or any Replacement Supplier, in respect of each person on the Final Staff List who is a Transferring Supplier Employee:

- 5.4.1. the most recent Month's copy pay slip data;

- 5.4.2. details of cumulative pay for tax and pension purposes;
- 5.4.3. details of cumulative tax paid;
- 5.4.4. tax code;
- 5.4.5. details of any voluntary deductions from pay; and
- 5.4.6. bank/building society account details for payroll purposes.

6. APPLICATION OF TUPE ON A SERVICE TRANSFER

- 6.1. The Customer shall determine whether or not based upon a reasonable assessment of the facts a Service Transfer is a situation to which TUPE and/or the Acquired Rights Directive may apply. In circumstances where it is so reasonably determined, it is agreed the Customer or a Replacement Supplier would inherit liabilities in respect of employees of the Supplier or any Sub-Contractor engaged in the provision of the Goods and Services and, accordingly, the provisions in paragraphs 7 to 20.1 of this Schedule shall apply.

7. TUPE INDEMNITIES

- 7.1. The Supplier shall, and shall procure that any Sub-Contractor shall, perform and discharge all its obligations in respect of all the Transferring Supplier Employees up to and including the Service Transfer Date. The Supplier shall indemnify the Customer in full for itself and on behalf of any Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and/or any Replacement Supplier arising from, in connection with or as a result of all Employee Liabilities arising from the Supplier's, or any Sub-Contractor's, failure to perform and discharge any such obligation.
- 7.2. The Supplier shall indemnify the Customer in full for itself and on behalf of any Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and/or any Replacement Supplier in connection with or as a result of arising from or as a result of:
 - 7.2.1. any Employee Liabilities whatsoever and howsoever arising on or before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date save simply for accrual of service before that date;
 - 7.2.2. any and all acts or omissions by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date (other than an act or omission of the Customer or any Replacement Supplier);
 - 7.2.3. any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for which it is alleged that the Customer or any Replacement Supplier may be liable by virtue of this Lease Agreement and/or TUPE and/or the Acquired Rights Directive;
 - 7.2.4. all and any losses in respect of all emoluments and outgoings in relation to the Employees (including without limitation all wages, bonuses, PAYE, national

- insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Subsequent Service Transfer Date; and
- 7.2.5. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE and in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Customer's or any Replacement Supplier's failure to comply with Regulation 13(4) of TUPE;
 - 7.2.6. any claim arising out of the provision of, or proposal by the Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Supplier Employee arising on or before the Service Transfer Date;
 - 7.2.7. any statement communicated to or action undertaken by the Supplier to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing.
- 7.3. If any person who is not a Transferring Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Supplier or any Sub-Contractor to the Customer or any Replacement Supplier pursuant to TUPE or the Acquired Rights Directive, then:
- 7.3.1. the Customer will and shall use its reasonable endeavours to procure that the Replacement Supplier will, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 7.3.2. the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Supplier or take such other steps as it considers appropriate to deal with the matter.
- 7.4. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier, the Customer shall and shall use its reasonable endeavours to procure that the Replacement Supplier shall immediately release the person from his employment.
- 7.5. If, after the fifteen (15) Working Day period specified in paragraph 7.3.2 of this Schedule has elapsed:
- 7.5.1. no such offer of employment has been made; or
 - 7.5.2. such offer has been made but not accepted; or
 - 7.5.3. the situation has not otherwise been resolved,
- the Customer may and shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment of such person.
- 7.6. Subject to the Customer or the Replacement Supplier acting in accordance with the provisions of paragraph 7 of this Schedule, the Supplier shall indemnify the Customer in full for itself and on behalf of the Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and any Replacement Supplier in respect of all Employee Liabilities arising out of termination pursuant to the provisions of paragraph 7.5 of this Schedule any direct employment costs (if any) associated with the employment of such person by the Customer or the Replacement Supplier up to the date of

termination of such persons employment.

- 7.7. If any such person as is described in paragraph 7.3 of this Schedule is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Customer or Replacement Supplier within the time scales set out in this paragraph 7 of this Schedule, such person will be treated as a Transferring Supplier Employee.
- 7.8. The Customer shall, and shall use its reasonable endeavours to procure that the Replacement Supplier shall indemnify the Supplier against all Employee Liabilities arising from the Customer's or a Replacement Supplier's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Supplier Employee arising from or as a result of any act or omission by the Customer or a Replacement Supplier relating to a Transferring Supplier Employee occurring before the Service Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Supplier Employee or on or after the Service Transfer Date or any other matter, event or circumstance occurring or having its origin after the Service Transfer Date.
- 7.9. The Parties will co-operate to ensure that any requirement to inform and consult with the Transferring Supplier Employees and or employee representatives in relation to a Service Transfer will be fulfilled.
- 7.10. The Customer will assume (or will procure that the Replacement Supplier, as the case may be, will assume) the outstanding obligations of the Supplier in relation to the Transferring Supplier Employees in respect of accrued holiday entitlements and accrued holiday remuneration to the Service Transfer Date. In consideration, the Supplier will or will procure that any Sub-Contractor will pay to the Customer (or the Replacement Supplier as the case may be) within fourteen (14) Working Days of the Service Transfer Date the full amount necessary to enable the Customer or the Replacement Supplier to meet the cost of providing any such untaken holiday entitlements and remuneration accruing as at the Service Transfer Date. The Customer or the Replacement Supplier, as the case may be, will reimburse the Supplier and any Sub-Contractor any amount paid by the Supplier or the Sub-Contractor before the Service Transfer Date in respect of holidays taken in excess of any Transferring Supplier Employee's entitlement to paid holiday in respect of the period ending on the Service Transfer Date.

8. PROVISIONS WHERE TUPE DOES NOT APPLY

If, in the event of a Service Transfer to which TUPE or the Acquired Rights Directive do not apply the following provisions shall apply:

- 8.1. the Customer can and shall advise the Replacement Supplier that it can, in its discretion, make to any of the employees identified on the list provided by the Supplier under paragraph 5.1.1 of this Schedule, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the termination referred to in paragraph 8.2 of this Schedule.
- 8.2. When the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave its employment, as soon as practicable,, which could be without the employee or worker having worked his full notice period, if the employee so requests.
- 8.3. If the employee does not accept an offer of employment made by the Customer or Replacement Supplier, or no such offer is made, the employee shall remain employed by the Supplier (or the relevant Sub-Contractor, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Supplier or the relevant

Sub-Contractor and the Supplier shall indemnify the Customer in full for itself and on behalf of any Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and any Replacement Supplier in respect of any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-Contractor.

SCHEDULE 9

ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

1.1. This schedule 9 specifies the Alternative Clauses and Additional Clauses that were requested in the Order Form and that shall apply to this Lease Agreement.

2. CLAUSES SELECTED

2.1. The Customer, in the Order Form, requested that the following Alternative Clauses should apply:

2.1.1. Law and Jurisdiction:

2.1.1.1. [*** [English Law (default)] [Scots Law] [Northern Ireland Law] ***]

2.1.2. [*** Non-Crown Bodies ***]; and

2.1.3. [*** Private Authorities ***].

2.2. The Customer, in the Order Form, requested that the following Additional Clauses should apply:

2.2.1. [*** Security Measures ***]; and

2.2.2. [*** Access to MOD Sites ***].

3. IMPLEMENTATION

The appropriate changes have been made in this Lease Agreement to implement the Alternative Clauses specified in paragraph 2.1 and the Additional Clauses specified in paragraph 2.2 shall be deemed to be incorporated into this Lease Agreement.

4. ALTERNATIVE CLAUSES

SCOTS LAW

4.1. For Scots Law, make the following changes:

4.1.1. Delete Clause 45.1 and insert:

48.1. SCOTS LAW AND JURISDICTION

48.1.1 Subject to the provisions of clause 48.2, this Lease Agreement shall be considered as a contract made in Scotland, the Customer and the Supplier accept the exclusive jurisdiction of the Scottish Courts and agree that this Lease Agreement is to be governed by and construed according to Scots Law.

48.1.2 This Lease Agreement shall be binding upon the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

NORTHERN IRELAND LAW

4.2. For Northern Ireland Law, make the following changes:

4.2.1. Delete Clause 45.1 and insert:

48.1 LAW AND JURISDICTION OF NORTHERN IRELAND

48.1.1 Subject to the provisions of clause 45.2 this Lease Agreement shall be considered as a contract made in Northern Ireland, the Customer and the Supplier accept the exclusive jurisdiction of the Northern Ireland Courts and agree that this Lease Agreement is to be governed by and construed according to Northern Ireland Law.

48.1.2 This Lease Agreement shall be binding upon the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

4.2.2. Term and Termination

4.2.2.1. In clause 25.1.1.6 delete "...Section 123 of the Insolvency Act 1986." and insert [*** ...Article 103 of the Insolvency (NI) Order 1989. ***]

4.2.3. Racial Discrimination

4.2.3.1. Delete clause 32 and insert:

32. DISCRIMINATION

32.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, Fair Employment (NI) Acts 1976 and 1989, the Sex Discrimination (NI) Orders 1976 and 1988, the Equal Pay Act (NI) 1970, or any statutory modification or re-enactment thereof relating to discrimination in employment.

32.2 The Supplier shall take all reasonable steps to ensure the observance of the provisions of clause 32.1 by the Sub-contractors employed in the execution of this Lease Agreement.

NON-CROWN BODIES

4.3. Where the Customer is not a Crown Body, the following changes should be made:

4.3.1. Delete the following wording in the definition of Staff Vetting Procedures:

" , including but not limited to, the provisions of the Official Secrets Act 1911 to 1989".

4.3.2. Official Secrets Act

Delete clause 22.7.1.1 and insert "Not used"

PRIVATE AUTHORITIES

4.4. For Contracts formed with Private Authorities make the following changes:

FREEDOM OF INFORMATION

[Guidance: Where the Customer is exempt from the FOIA, and notifies the Supplier accordingly in the Order Form, the following should be inserted to replace clauses 22.8.1, 22.8.2 and 22.8.3]

"22.8.1 The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA."

5. **ADDITIONAL CLAUSES**

SECURITY MEASURES

[Guidance: number given as example. Insert as next available contract clause number]

46.1 In this clause 46:

46.1.1 "secret matter" means any matter connected with or arising out of the performance of this Lease Agreement which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';

46.1.2 "document" includes specifications, plans, drawings, photographs and books;

46.1.3 references to a person employed by the Supplier shall be construed as references to any person employed or engaged by the Supplier to do anything in connection with this Lease Agreement, whether under a contract of service with the Supplier or under any other contract or arrangement whatsoever; and

46.1.4 "servant" where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

46.2 The Supplier shall not, either before or after the completion or termination of this Lease Agreement, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:

46.2.1 without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

46.2.2 disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;

46.2.3 without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or

46.2.4 disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Lease Agreement that such person shall have the information.

- 46.3 Without prejudice to the provisions of clause 46.2, the Supplier shall, both before and after the completion or termination of this Lease Agreement, take all reasonable steps to ensure:
- 46.3.1 that no such person as is mentioned in clauses 46.2.1, 46.2.2 or 46.2.3 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
 - 46.3.2 that no visitor to any premises in which there is any item to be supplied under this Lease Agreement or where Goods and Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
 - 46.3.3 that no photograph of any item to be supplied under this Lease Agreement or any portions of the Goods and Services shall be taken except insofar as may be necessary for the proper performance of this Lease Agreement or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
 - 46.3.4 that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Lease Agreement or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
 - 46.3.5 that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in clause 46.3.4, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 46.4 The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this clause 46.3 shall be final and conclusive.
- 46.5 If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 46.6 If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act, 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Lease Agreement.
- 46.6 If at any time either before or after the expiry or termination of this Lease Agreement it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Lease Agreement or any thing done or to be done in pursuance thereof, the

matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.

- 46.7 The Supplier shall place every person employed by it, other than a Sub-contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by clauses 46.2 and 46.3, and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this clause 46.7 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 46.8 The Supplier shall, if directed by the Customer, include in the Sub-Lease Agreement provisions in such terms as the Customer may consider appropriate for placing the Sub-contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this clause 46, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- 46.8.1 give such notices, directions, requirements and decisions to its Sub-contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this clause 46.8 into operation in such cases and to such extent as the Customer may direct;
- 46.8.2 if there comes to its notice any breach by the Sub-contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this clause 46, notify such breach forthwith to the Customer; and
- 46.8.3 if and when so required by the Customer, exercise its power to determine the Sub-Lease Agreement under the provision in that Sub-Lease Agreement which corresponds to clause 46.11.
- 46.9 The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this clause 46 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which any thing is being done or is to be done under this Lease Agreement or in which there is or will be any item to be supplied under this Lease Agreement, and also to inspect any document or item in any such premises or which is being made or used for

the purposes of this Lease Agreement and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

46.10 Nothing in this clause 46 shall prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

46.11 If the Customer shall consider that any of the following events has occurred:

46.11.1 that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this clause 46; or

46.11.2 that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or

46.11.3 that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in clause 46.11.1, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information,

and shall also decide that the interests of the State require the termination of this Lease Agreement, the Customer may by notice in writing terminate this Lease Agreement forthwith.

46.12 A decision of the Customer to terminate this Lease Agreement in accordance with the provisions of clause 46.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

46.13

46.13.1 The Supplier may within five (5) Working Days of the termination of this Lease Agreement in accordance with the provisions of clause 46.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in clauses 46.11.1, 46.11.2 or 46.11.3 and to give particulars of that event; and

46.13.2 the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

46.14

46.14.1 The termination of this Lease Agreement pursuant to clause 46.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

46.14.2 the Supplier shall be entitled to be paid for any work or thing done under this Lease Agreement and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Lease Agreement if the Lease Agreement had not been terminated, or at a reasonable price;

46.14.3 the Customer may take over any work or thing done or made under this Lease Agreement (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in

writing to the Supplier given within thirty (30) Days from the time when the provisions of this clause 46 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this clause 46.14.3, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this clause 46.14.3; and

46.14.4 save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Lease Agreement.

46.15 If, after notice of termination of this Lease Agreement pursuant to the provisions of clause 46.11:

46.15.1 the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in clause 46.13.1; or

46.15.2 the Customer shall state in the statement and particulars detailed in clause 46.13.2 that the event upon which the Customer's decision to terminate this Lease Agreement was based is an event mentioned in clause 46.11.3,

the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:

46.15.3 the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Lease Agreement under the provisions of clause 46.11 and properly provided by or supplied to the Supplier for the performance of this Lease Agreement, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

46.15.4 the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

46.15.5 the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Lease Agreement to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Lease Agreement;

46.15.6 if hardship to the Supplier should arise from the operation of this clause 46.15 it shall be open to the Supplier to refer the circumstances

to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this clause 46.15.6 shall be final and conclusive; and

46.15.7 subject to the operation of clauses 46.15.3, 46.15.4, 46.15.5, and 46.15.6, termination of this Lease Agreement shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

[Guidance: If clause 46 is used, ensure that the termination right under clause 46.11 and clause 46.15 is included in clause 25 of the Lease Agreement.]

ACCESS TO MOD SITES

47. **[Guidance: number given as example. Insert as next available Lease Agreement clause number]**

47.1 In this clause 47:

47.1.1 "Site" shall include any of Her Majesty's Ships or Vessels and Service Stations.

47.1.2 "Officer in charge" shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

47.2 The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Ordered Goods.

47.3 The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

47.4 The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Lease Agreement where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Lease Agreement.

47.5 Where the Supplier's representatives are required by this Lease Agreement to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air

Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Lease Agreement. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Lease Agreement shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 47.6 Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 47.7 Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 47.8 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 47.9 The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

[Guidance: If clause 47 is used ensure that the term *Technical Branch* used in clause 47.5 is defined in the Lease Agreement definitions]

