Order Schedule 6 (ICT Services)

1. Definitions

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Buyer Property"	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Order Contract;
"Buyer Software"	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Order Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
"Commercial off the shelf Software" or **"COTS Software"**	software (including any New Releases for the software made available for its commercial user base as part of its standard license terms) where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
"COTS Software Modifications"	any modifications made to the Source Code and Object Code of the COTS Software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Order Contract, but shall not include Specially Written Software;
"Defect"	any of the following:
	a) any error, damage or defect in the manufacturing of a Deliverable; or
	b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
	c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant

Deliverable from passing any Test required under this Order Contract; or

d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Order Contract;

"Emergency Maintenance" ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the Operating Environment or the Services, or any part of the Operating Environment or the Services, has or may have developed a fault;

"Licensed Software" all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Order Contract, including any COTS Software and any COTS Software Modifications;

"Maintenance Schedule" has the meaning given to it in Paragraph 8 of this Schedule;

"Malicious Software" 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;

"New Release" an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not Defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

"Object Code" software and/or data in machine-readable, compiled object code form;

"Open Source Software" computer software that has its Source Code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;

"Operating Environment"	means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:
	a) the Deliverables are (or are to be) provided; or
	b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or
	c) where any part of the Supplier System is situated;
"Permitted Maintenance"	has the meaning given to it in Paragraph 8.2 of this Schedule;
"Quality Plans"	has the meaning given to it in Paragraph 6.1 of this Schedule;
"Sites"	has the meaning given to it in Joint Schedule 1 (Definitions), and for the purposes of this Order Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
"Software"	Specially Written Software, COTS Software, non-COTS Supplier and third party Software, and COTS Software Modifications;
"Software as a Service"	a Software licensing and delivery model in which Software is licensed on a subscription basis and is centrally hosted;
"Software Supporting Materials"	has the meaning given to it in Paragraph 9.1 of this Schedule;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Order Contract, but shall not include COTS Software Modifications;
"Supplier System"	the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the COTS Software Modifications, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System).

2. When this Schedule should be used

2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT services which are part of the Deliverables.

3. Buyer due diligence requirements

3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;

3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Order Start Date) future Operating Environment;

3.1.2. operating processes and procedures, and the working methods of the Buyer; and

3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets.

4. Licensed software warranty

4.1. The Supplier represents and warrants that:

4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Subcontractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Order Contract including the receipt of the Deliverables by the Buyer;

4.1.2. all components of the Specially Written Software shall:

4.1.2.1. be free from material design and programming errors;

4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Order Schedule 14 (Service Levels) and Documentation; and

4.1.2.3. not infringe any IPR.

5. Provision of ICT services

5.1. The Supplier shall:

5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or New Release;

5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;

5.1.3. ensure that the Supplier System will be free of all encumbrances;

5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Order Contract; and

5.1.5. minimise any disruption to the Services and the Operating Environment and/or the Buyer's operations when providing the Deliverables;

6.   **Standards and Quality Requirements**

6.1. The Supplier shall develop, by the date in the Implementation Plan, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Order Contract.

6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.

6.4. The Supplier shall ensure that the Personnel shall at all times during the Order Contract Period:

    6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Order Contract;

    6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and

    6.4.3. obey all lawful instructions and reasonable directions of the Buyer and provide the Deliverables to the reasonable satisfaction of the Buyer.

7.   **ICT Audit**

7.1. The Supplier shall allow any auditor access to the Supplier premises to:

    7.1.1. inspect the Supplier System and the wider service delivery environment (or any part of them);

    7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing; and

    7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

8.   **Maintenance of the Operating Environment**

8.1. The Supplier shall create and maintain a rolling schedule of planned maintenance to the Operating Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.

8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.

8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the Operating Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Operating Environment and the provision of the Deliverables.

9. **Intellectual Property Rights in ICT**

9.1. Assignments granted by the Supplier: Specially Written Software and New IPRs

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

9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and

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

9.1.2. The Supplier shall deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt.

9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

9.1.4. For the avoidance of doubt, the Supplier acknowledges that the development of Markers which do not include the Supplier's Existing IPR are deemed New IPR.

9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer

9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:

a) of its own Existing IPR that is not COTS Software;

b) third party software that is not COTS Software; or

c) COTS Software Modifications.

9.2.2. Where the Buyer Approves the use of:

a) the Supplier's Existing IPR that is not COTS Software; or

b) COTS Software Modifications

the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Order Contract Period and after

expiry of the Order Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

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

9.2.3.2. only use such third party IPR as referred to at Paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

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

9.2.5. The Supplier may terminate a licence granted under this Paragraph by giving at least thirty (30) days' notice in writing if there is an Buyer Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

9.3. Licenses for COTS Software by the Supplier and third parties to the Buyer

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

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

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licencee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

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

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

9.3.4.2. will no longer be made commercially available

9.4. Buyer's right to assign/novate licences

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 9.2 and 9.3 to a Central Government Body.

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraph 9.2 and 9.3.

9.5. Licence granted by the Buyer

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Order Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Order Contract, including 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 15 (Confidentiality). Unless the Buyer otherwise agrees in advance in writing, the licenses granted to use the Buyer Software and the Specially Written Software are limited to the circumstances set out in this Paragraph.

9.6. Open Source Publication

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

9.6.1.1. suitable for publication by the Buyer as Open Source Software; and

9.6.1.2. based on open standards (where applicable), and the Buyer may, at its sole discretion, publish the same as Open Source Software.

9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:

9.6.2.1. are suitable for release as Open Source Software and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;

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

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

9.6.2.4. can be published as Open Source Software without breaching the rights of any third party;

9.6.2.5. will be supplied in a format suitable for publication as Open Source Software ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and

9.6.2.6. do not contain any Malicious Software.

9.7. Malicious Software

9.7.1. The Supplier shall, throughout the Order 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.

9.7.2. 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 Government

Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.

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

9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government 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 Buyer when provided to the Supplier; and

9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Government Data (whilst the Government Data was under the control of the Buyer).

9.8. Software as a Service

9.8.1. Where the Parties agree in writing that any Software shall be provided by way of Software as a Service, the Buyer acknowledges that, as a consequence:

9.8.1.1. it will not be provided with a physical copy of such Software (except for Specially Written Software and Open Source Software);

9.8.1.2. use of such Software is restricted to use by way of Software as a Service;

9.8.1.3. any reference to a perpetual licence granted to the Buyer under this Order Contract in relation to Software to be provided as Software as a Service in accordance with this Paragraph 9.8 shall be construed as a licence for the term of this Order Contract only; and

9.8.1.4. in respect of any Software as a Service provided by a third party for which the Buyer has approved licence terms which are not royalty or payment free, the Supplier will pay all royalties and any other fees due and payable pursuant to such licence terms during the Order Contract Period on behalf of the Buyer.

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