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**DATED 26th JULY 2021**

**(1) NUCLEAR DECOMMISSIONING AUTHORITY**

**(2) ATAMIS LTD**

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**NDA COMMERCIAL SYSTEMS PROCUREMENT  
LOT A: SOURCE TO CONTRACT SYSTEM  
AGREEMENT**

**Relating to “Project Victory”**

**Ref: NDA9/00756**

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<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

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**THIS AGREEMENT** is made on 26<sup>th</sup> July 2021

**BETWEEN:-**

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** whose principal place of business is at Herdus House, Westlakes Science Park, Moor Row, Cumbria CA24 3HU (the "**Authority**"); and
  - (2) **ATAMIS LTD** a company registered in [England and Wales] under company number 06998952 whose registered office is at South Gate House, Wood Street, Cardiff CF10 1EW (the "**Supplier**").
- (each a "**Party**" and together the "**Parties**").

**WHEREAS:-**

- (A) The Authority is established to deliver the decommissioning and clean-up of the UK's civil nuclear legacy and wishes to purchase corporate applications and associated services to support its internal procurement activities and those of the Service Recipients.
- (B) On 26 October 2020 the Authority advertised in the Official Journal of the European Union, reference [2020/S 208-509128](#), inviting prospective suppliers to submit proposals for the supply of the corporate applications and services as follows:

The Nuclear Decommissioning Authority (NDA) has established 'Project Victory', to replace expiring contracts and significantly enhance the NDA group's current commercial IT systems capability. The NDA group comprises Sellafield Ltd, Magnox Ltd, LLW Repository Ltd, Dounreay Site Restoration Ltd, International Nuclear Services Ltd, Direct Rail Services Ltd, and Radioactive Waste Management Ltd; and spends in the region of GBP 1.9 billion per annum with the supply chain. The new systems will cover all aspects of how we manage that spend including: our procurement pipelines, sourcing, contracts, commercial benefits and savings tracking, identifying and managing supply chain risk, and strategic supplier relationship management.

The new systems are being procured and contracted for by NDA in five parts, referred to hereafter as lots:

- Lot A: Source-to-Contract System;
- Lot B: Market Intelligence and Category Strategies;
- Lot C: Contract Management System for End-to-End Project Management Contracts;
- Lot D: Supply Chain Risk Management System;
- Lot E: Analytics, Reporting and Dashboarding System.

This Agreement is for the Lot A: Source-to-Contract System. The Source-to-Contract System will be used to manage our procurement pipelines, sourcing activities, to manage a large proportion of our contracts, and identify and realise commercial savings and benefits. It may also be used for strategic supplier relationship management.

The system forms the lynchpin for the rest of the commercial systems suite and as such will be required to interface directly with the systems procured under the other lots creating 'one-version of the truth' and providing data and information for operational and strategic decision making whilst minimising double-keying.

- (C) The Supplier is a leading provider of Procurement Solutions and has experience in delivering Source-to-Contract IT Systems and related services.
- (D) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (E) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:-

## SECTION A - PRELIMINARIES

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) .
- 1.2 In this Agreement, unless the context otherwise requires:-
- 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.2.5 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):-
    - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
    - (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
  - 1.2.6 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.2.7 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
  - 1.2.9 unless otherwise provided and save for references in Appendices 1 to 3 of Schedule 5 (*Software*) and in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the Clauses and Schedules of this Agreement and references in any Schedule to paragraphs, Parts and Appendices are, unless otherwise provided, references to the paragraphs, parts and appendices of the Schedule or the Part of the Schedule in which the references appear; and
  - 1.2.10 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:-

- 1.3.1 the Clauses and Schedule 1 (*Definitions*);
- 1.3.2 Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Appendices;
- 1.3.3 any other Schedules and their Appendices (other than Schedule 4.1 (*Supplier Solution*) and its Appendices); and
- 1.3.4 Schedule 4.1 (*Supplier Solution*) and its Appendices (if any).

1.4 The Schedules and their Appendices form part of this Agreement.

1.5 In entering into this Agreement the Authority is acting as a central purchasing body for the purposes of the Public Contracts Regulations 2015.

## 2. **DUE DILIGENCE**

2.1 The Supplier acknowledges that:-

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to the Authority Requirements and the operating processes and procedures and the working methods of the Authority and the Service Recipients.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any misinterpretation of the Authority Requirements and/or any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

## 3. **WARRANTIES**

3.1 The Authority represents and warrants that:-

- 3.1.1 it has full capacity and authority to enter into and to perform this Agreement; and
- 3.1.2 this Agreement is executed by its duly authorised representative.

3.2 The Supplier represents and warrants that:-

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
- 3.2.3 this Agreement is executed by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
- 3.2.5 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire, Invitation to Submit Initial Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations

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have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

- 3.2.6 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
  - 3.2.7 it has notified the Authority in writing of any Occasions of Tax Non-compliance- and any litigation in which it is involved that is in connection with any Occasion of Tax Non-compliance-;
  - 3.2.8 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;
  - 3.2.9 there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date by reference to the facts then existing.
  - 3.4 The fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
  - 3.5 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## SECTION B – THE SERVICES

### 4. TERM

#### 4.1 This Agreement shall:-

- 4.1.1 come into force on the Effective Date; and
- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 29 (*Termination Rights*), terminate:-
  - (a) at the end of the Initial Term; or
  - (b) if the Authority elects to extend the Initial Term by giving the Supplier at least one hundred and eighty (180) days' notice before the end of the Initial Term, at the end of the First Extension Period; or
  - (c) if the Authority elects to extend the Extended Term by giving the Supplier at least one hundred and eighty (180) days' notice before the end of the First Extension Period, at the end of the Second Extension Period.

### 5. SERVICES

#### Standard of Services

- 5.1 The Supplier shall provide (for the benefit of the Authority and Service Recipients):-
  - 5.1.1 the Implementation Services from (and including) the Implementation Services Commencement Date;



- 5.1.2 the Operational Services in each case from (and including) the relevant Operational Service Commencement Date; and
- 5.1.3 the Projects when commissioned by the Authority or a Service Recipient in accordance with the process set out in the Change Control Procedure.
- 5.2 The Supplier shall ensure that the Services:-
  - 5.2.1 comply in all respects with the Services Description; and
  - 5.2.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement.
- 5.3 The Authority may require the Supplier to provide any or all of the Services to (and for the benefit of) any or all of the Service Recipients at any time during the Term.
- 5.4 The Supplier shall perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:-
  - 5.4.1 all applicable Law;
  - 5.4.2 Good Industry Practice;
  - 5.4.3 the Standards;
  - 5.4.4 the Baseline Security Requirements; and
  - 5.4.5 the quality standard BS EN ISO 9001.
- 5.5 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.4.1 to 5.4.5, the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

#### **Supplier covenants**

- 5.6 The Supplier shall:-
  - 5.6.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
  - 5.6.2 ensure that:-
    - (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority or any Service Recipient which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority and any Service Recipient;
    - (b) the release of any upgrade to any Software complies with the interface requirements in the Services Description or specified under the Change Control Procedure and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (Security Management)) shall notify the Authority three (3) months before the release of any new Software or Upgrade; and
    - (c) all Software, including Upgrades, Updates and New Releases, used by or on behalf of the Supplier in providing the Services are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;

- 5.6.3 ensure that any Documentation and training provided by the Supplier to the Authority and all Service Recipients are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.6.4 to the extent specified in the Authority Requirements, co-operate with the Other Suppliers as specified in the Authority Requirements and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to them;
- 5.6.5 provide the Authority and Service Recipients with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.6.6 notify the Authority in writing as soon as reasonably possible and in any event within one month of any change of Control taking place (such notification to include notification of any likely or anticipated adverse impact on the Services); and
- 5.6.7 notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement.

#### **Software warranty**

- 5.7 Without prejudice to Clauses 5.6 (*Supplier Covenants*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Software shall:-
  - 5.7.1 be free from material design and programming errors;
  - 5.7.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
  - 5.7.3 not infringe any Intellectual Property Rights.

#### **Continuing obligation to provide the Services**

- 5.8 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:-
  - 5.8.1 the existence of an unresolved Dispute; and/or
  - 5.8.2 any failure by the Authority to pay any Charges.

#### **Authority Responsibilities**

- 5.9 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

### **6. IMPLEMENTATION**

#### **Implementation Plan and Delays**

- 6.1 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) including in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.2 The Supplier shall:-
  - 6.2.1 comply with the Implementation Plan; and
  - 6.2.2 ensure that each Milestone is Achieved on or before its Milestone Date.

- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:-
- 6.3.1 notify the Authority in accordance with Clause 26.1 (*Rectification Plan Process*);
  - 6.3.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
  - 6.3.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

#### **Testing and Achievement of Milestones**

- 6.4 The Parties shall comply with the provisions of Schedule 6.2 (*Milestone Achievement Procedure*) including in relation to the procedures to determine whether a Milestone or Test has been Achieved.

#### **7. KEY PERFORMANCE INDICATORS**

- 7.1 The Supplier shall:-
- 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator; and
  - 7.1.2 comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Key Performance Indicators.

#### **KPI Failures**

- 7.2 If in any Service Period:-
- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with paragraph 3 of Part 3 of Schedule 7.1 (*Charges and Invoicing*); and/or
  - 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1).
- 7.3 Service Credits shall not be the Authority's exclusive financial remedy for a KPI Failure except where:-
- 7.3.1 the KPI Failure:-
    - (a) breaches the relevant KPI Service Threshold;
    - (b) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
    - (c) results in:-
      - (i) the corruption or loss of any Authority Data (in which case the remedies under Clause 19.7 (Authority Data and Security Requirements) shall also be available); and/or
      - (ii) the Authority being required to make a compensation payment to one or more third parties;
      - (iii) the Supplier has fraudulently misreported its performance against any Key Performance Indicator; and/or
    - (d) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 29.1.2 (Termination by the Authority).

## **Critical Performance Failure**

- 7.4 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 29.1 or 29.2 (*Termination by the Authority*).

## **8. SERVICES IMPROVEMENT**

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Authority both on its Product Roadmap from time to time and, in addition, once every twelve (12) months on:-
- 8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority and Service Recipients which the Parties may wish to adopt;
  - 8.1.2 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties (including the Other Suppliers) or the Authority or Service Recipients which might result in efficiency or productivity gains or in reduction of operational risk; and/or
  - 8.1.3 commercially reasonable and technically possible new or potential improvements that could be made by the other suppliers to the Authority in connection with Project Victory for the benefit of the wider programme (including those improvements that arise as a result of a Change in Law or in Good Industry Practice).
- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

## **SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **9. FINANCIAL AND TAXATION MATTERS**

#### **Charges and Invoicing**

- 9.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 9.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement including under Clauses 6.4 (*Testing and Achievement of Milestones*), 11 (*Records, Reports, Audits and Open Book Data*), 21 (*Transparency and Freedom of Information*) and 22 (*Protection of Personal Data*).
- 9.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### **VAT**

- 9.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

- 9.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority 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 this Agreement. Any amounts due under this Clause 9.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 9.6 Without limiting Clause 9.1, the Charges shall be inclusive of all duties and taxes other than VAT.

#### **Set-off and Withholding**

- 9.7 The Authority may set off any amount owed by the Supplier to the Authority against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority, provided that the Authority shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

#### **Financial Reporting and Financial Distress**

- 9.8 The Supplier shall provide to the Authority:
- 9.8.1 within twenty (20) Working Days of their being signed, certified copies of its audited accounts; and
  - 9.8.2 within ten (10) Working Days of its occurrence, notification of any material change in the financial status of the Supplier as measured by any of the following:
    - (a) any negative change in the credit rating of the Supplier;
    - (b) any reduction (in aggregate) of more than 25% in the net value of the Supplier's assets as specified in the most recent audited annual accounts; and
    - (c) the occurrence or likely occurrence of an Insolvency Event, applying any such event to the Supplier.
- 9.9 If, following any notification under Clause 9.8.2, the Authority is concerned about the Supplier's financial condition, the Supplier shall, on the Authority's written request, meet with the Authority within ten (10) Working Days of such request to discuss in good faith, but on a without prejudice basis, its concerns and how they might be addressed.
- 9.10 The Authority shall have the rights set out in Clause 9.11 if:
- 9.10.1 the credit rating of the Supplier falls below the Credit Rating Threshold; or
  - 9.10.2 the Supplier breaches any of its borrowing covenants; or
  - 9.10.3 the Authority reasonably believes the Supplier financial health is having or may have a material adverse impact on the continued performance and delivery of the Services.
- 9.11 The rights referred to in Clause 9.10 are as follows:
- 9.11.1 the right to require an increased level of reporting as against the reporting requirements described in Clause 9.8 for a period of time as specified by the Authority; and/or
  - 9.11.2 the right to require a Service Continuity Plan to be put in place and implemented by the Supplier to manage and mitigate the risks arising from its financial standing; and/or
  - 9.11.3 the right to require the Supplier's Chief Financial Officer (or appropriate delegate) to meet with the Authority to discuss the event and the impact on the Services and this Agreement within ten (10) Working Days of the request; and/or

9.11.4 the right to require the Supplier to submit Corporate Resolution Planning Information.

9.12 Without prejudice to its other rights under this Agreement if a Financial Distress Event subsists for a period of forty (40) Working Days or more, and Service Credits due reach or exceed the equivalent of twenty (20) Service Points for three (3) consecutive months in any rolling twelve (12) month period; the such circumstance shall constitute a material Default which is irremediable for the purposes of paragraph (b) of the definition of Supplier Termination Event.

### **Promoting Tax Compliance**

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

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

9.13.2 promptly provide to the Authority:-

(a) details of the steps which the Supplier is taking to address the Occasion of Tax Non--Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non--Compliance as the Authority may reasonably require.

## **SECTION D - CONTRACT GOVERNANCE**

### **10. GOVERNANCE**

10.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

### **Representatives**

10.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

### **11. RECORDS, REPORTS, AUDITS & OPEN BOOK DATA**

11.1 The Supplier shall comply with the provisions of:-

11.1.1 Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and

11.1.2 Part 1 of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

11.2 The Parties shall comply with the provisions of:-

11.2.1 Part 2 of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

11.2.2 Part 3 of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

**12. CHANGE**

**Change Control Procedure**

12.1 Any requirement for a Change shall be subject to the Change Control Procedure.

**Change in Law**

12.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:-

12.2.1 a General Change in Law; or

12.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

12.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 12.2.2), the Supplier shall:-

12.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:-

- (a) whether any Change is required to the Services, the Charges or this Agreement; and
- (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and

12.3.2 provide the Authority with evidence:-

- (a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- (b) as to how the Specific Change in Law has affected the cost of providing the Services; and
- (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (Services Improvement), has been taken into account in amending the Charges.

12.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 12.2.2) shall be implemented in accordance with the Change Control Procedure.

**SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN**

**13. SUPPLIER PERSONNEL**

13.1 The Supplier shall:-

13.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

- 13.1.2 ensure that all Supplier Personnel:-
- (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*); and
  - (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);
- 13.1.3 subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority; and
- 13.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier.
- 13.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:-
- 13.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or
  - 13.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

#### **Employment Indemnity**

- 13.3 The Supplier shall both during and after the Term indemnify the Authority and Service Recipients against all Employee Liabilities that may arise as a result of any claims brought against the Authority or a Service Recipient by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

#### **Income Tax and National Insurance Contributions**

- 13.4 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:-
- 13.4.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - 13.4.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

#### **Staff Transfer**

- 13.5 The Parties agree that:-
- 13.5.1 commencement of the provision of the Services or a part of the Services is not anticipated by the Parties to result in a Relevant Transfer and accordingly Part C of Schedule 9.1 (*Staff Transfer*) shall apply; and



- 13.5.2 Part E of Schedule 9.1 (*Staff Transfer*) shall apply in relation to the expiry or termination of the Services or any part of the Services.

## 14. SUPPLY CHAIN RIGHTS AND PROTECTIONS

### Appointment of Sub-contractors

- 14.1 The Supplier shall not appoint any Sub-contractor without the Authority's prior written consent.
- 14.2 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 14, 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. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.
- 14.3 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

### Supply chain protection

- 14.4 The Supplier shall ensure that all Sub-contracts (which in this Clause 14.4 includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:-
- 14.4.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
- 14.4.2 where relevant to the Sub-contractor concerned, obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
- (a) data protection requirements set out in Clause 19 (*Authority Data and Security Requirements*) and 22 (*Protection of Personal Data*);
  - (b) FOIA requirements set out in Clause 21 (*Freedom of Information*);
  - (c) the conduct of Audits set out in Part 3 of Schedule 7.5 (*Financial Reports and Audit Rights*); and
- 14.4.3 a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Sub-contract without the Supplier first obtaining the written consent of the Authority.
- 14.5 The Supplier shall:-
- 14.5.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Such verification to take place within a reasonable period not exceeding ten (10) Working Days following receipt by the Supplier of an invoice from a Sub-contractor;

### **Termination of Sub-contracts**

- 14.6 The Authority may require the Supplier to terminate a Sub-contract where the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 29.1.2 (*Termination by the Authority*).

## **SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

### **15. INTELLECTUAL PROPERTY RIGHTS**

#### **15.1 Except as expressly set out in this Agreement:-**

- 15.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Supplier Software;
- (b) the Third Party Software;
- (c) the Third Party IPRs; and
- (d) the Supplier IPRs;

- 15.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:-

- (a) the Authority Data; and
- (b) the Authority Background IPRs.

- 15.2 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 15.1, 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).

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

### **16. LICENCES GRANTED BY THE SUPPLIER**

#### **Supplier Software and Supplier IPRs**

- 16.1 The Supplier shall not use any Supplier Software in the provision of the Services unless it is detailed in Schedule 5 (*Software*) or has prior approval in writing from the Authority.

- 16.2 The Supplier hereby grants to the Authority and each Service Recipient a royalty-free and non-exclusive:

- 16.2.1 licence to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing -up, loading, execution, storage, transmission or display)) the Supplier Non-COTS Software, Supplier Non-COTS IPRs, Third Party Non-COTS Software and Third Party Non-COTS IPRs:

- (a) during the Term for any purpose relating to the Services and for any purpose relating to the exercise of the Authority's and a Service Recipient's business or function (and including the right for the Authority and Service Recipients to integrate the Licensed Software with the software of Other Suppliers Software and allow data exchange between them); and

- (b) during the Data Handover Period for any purpose relating to the extraction and handover of the Authority Data to the Authority and Service Recipients and/or a Replacement Supplier.

16.2.2 licence to use the Supplier COTS Software and Supplier COTS IPRs during the Term on the licence terms identified in a letter in or substantially in the form set out in Appendix 1 to Schedule 5 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date.

### **Third Party Software and Third Party IPRs**

16.3 The Supplier shall not use the in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless it is detailed in Schedule 5 (*Software*) or has prior approval in writing from the Authority.

16.4 The Supplier hereby grants (or shall procure that the relevant third party grants) to the Authority and each Service Recipient a royaltyfree and nonexclusive licence during the Term and Data Handover Period to use the Third Party Non-COTS Software and Third Party Non-COTS IPRs on the terms set out in Clauses 16.2.1 and 16.2.2 (*Supplier Software and Supplier IPRs*), subject to the provisions of Clause 16.5.

16.5 If the Supplier cannot obtain for the Authority and each Service Recipient a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 16.4, the Supplier shall:

16.5.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use;

16.5.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party (such terms to be detailed in Schedule 5 (*Software*) for Third Party Non-COTS Software that the Supplier intends to use within the Services as at the Effective Date).

16.6 The Supplier shall:

16.6.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them (such terms to be detailed in Schedule 5 (*Software*) for Third Party COTS Software that the Supplier intends to use within the Services as at the Effective Date); and

16.6.2 unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause 16.6.1 (*Third Party Software and Third Party IPRs*), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority and Service Recipients on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

### **Open Source Software**

16.7 The Supplier shall ensure that the Software does not contain any Open Source software other than such of the Software as is identified as such in Schedule 5 (*Software*). The Supplier warrants that the Open Source software is licensed upon terms which permit the use of such Open Source software by the Supplier, the Authority and each of the Service Recipients for all purposes contemplated by this Agreement.

## **Authority's right to assign/novate licences**

- 16.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 16.2 (*Supplier Software and Supplier IPRs*) to any person to whom this Agreement is assigned, novated or otherwise transferred in accordance with Clause 32 (*Assignment and Novation*).
- 16.9 Any change in the legal status of the Authority or a Service Recipient shall not affect the validity of any licence granted in this Clause 16.2 (*Supplier Software and Supplier IPRs*) and any successor bodies shall still be entitled to the benefit of any such licence.

## **17. LICENCES GRANTED BY THE AUTHORITY**

- 17.1 The Authority hereby grants (or shall procure the grant) to the Supplier a royalty -free, non-exclusive, non-transferable licence during the Term to use the Authority Background IPRs and the Authority Data solely to the extent necessary for performing the Services, along with the access of NDA systems as required, in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:-
- 17.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Authority on the same terms as set out in Clause 20 (*Confidentiality*); and
  - 17.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority and the Service Recipients.
- 17.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 17.1 and any sub-licence granted by the Supplier in accordance with Clause 17.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:-
- 17.2.1 immediately cease all use of the Authority Background IPRs and the Authority Data (as the case may be);
  - 17.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Background IPRs and the Authority Data (as the case may be); and
  - 17.2.3 ensure, so far as reasonably practicable, that any Authority Background IPRs and Authority Data that are held in electronic, digital or other machine -readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Background IPRs and/or Authority Data.

## **18. IPRS INDEMNITY**

- 18.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 18.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:-
- 18.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

18.2.2 replace or modify the relevant item with non--infringing substitutes provided that:-

- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
- (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
- (d) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

18.3 If the Supplier elects to procure a licence in accordance with Clause 18.2.1 or to modify or replace an item pursuant to Clause 18.2.2, but this has not avoided or resolved the IPRs Claim, then:-

18.3.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and

18.3.2 without prejudice to the indemnity set out in Clause 18.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## 19. **AUTHORITY DATA AND SECURITY REQUIREMENTS**

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

19.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

19.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority or relevant Service Recipient as requested by the Authority and in the format specified by the Authority.

19.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

19.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan and in any event not less than once in every twenty four (24) hours, seven (7) days a week. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request.

19.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.

19.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:-

19.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or

- 19.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan*).
- 19.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 19.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 19.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 19.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 19.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 19.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

#### **Malicious Software**

- 19.13 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the Supplier System (or as otherwise agreed by the Parties).
- 19.14 Notwithstanding Clause 19.13 (*Malicious Software*), 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 Authority Data, assist each other to mitigate any Losses and to restore the Supplier's provision of the Services in accordance with this Agreement, to the Authority's desired operating efficiency.
- 19.15 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 19.14 (*Malicious Software*) shall be borne by the Parties as follows:
- 19.15.1 by the Supplier where the Malicious Software has been introduced into the Supplier System by the Supplier or its Sub-contractors, including through Third Party Software, (except where the Authority has waived the obligation set out in Clause 19.13 (*Malicious Software*) or originates from the Authority Data (whilst the Authority 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 Authority when provided to the Supplier; and
- 19.15.2 otherwise by the Authority.

#### **20. CONFIDENTIALITY**

- 20.1 For the purposes of this Clause 20, the term "Disclosing Party" shall mean a Party (including for the purposes of this Clause 20 (*Confidentiality*), only, each Service Recipient) which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party (including for the purposes of this Clause 20 (*Confidentiality*), only, each Service Recipient) which receives or obtains directly or indirectly Confidential Information.

- 20.2 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:-
- 20.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 20.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
  - 20.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
  - 20.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 20.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:-
- 20.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 21 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
  - 20.3.2 the need for such disclosure arises out of or in connection with:-
    - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
    - (b) the examination and certification of the Authority's or a Service Recipient's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority or a Service Recipient is making use of any Services provided under this Agreement; or
    - (c) the conduct of a Central Government Body review in respect of this Agreement; or
  - 20.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 20.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 20.5 The Supplier may disclose the Confidential Information of the Authority or a Service Recipient on a confidential basis only to:-
- 20.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
  - 20.5.2 its auditors; and
  - 20.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority or a Service Recipient pursuant to this Clause 20.5, it shall remain responsible at all times for compliance with the

confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

- 20.6 The Authority and each Service Recipient may disclose the Confidential Information of the Supplier:-
- 20.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority, the Service Recipient or of the relevant Central Government Body;
  - 20.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 20.6.3 to the extent that the Authority or Service Recipient (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 20.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 20.6.1 for any purpose relating to or connected with this Agreement;
  - 20.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights and Exit Management rights;
  - 20.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement;
  - 20.6.7 between Service Recipients and the Authority and vice versa; and/or
  - 20.6.8 to any Other Supplier, on a confidential basis, with prior agreement of the Supplier

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority and Service Recipients under this Clause 20.

- 20.7 Nothing in this Clause 20 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

## 21. **TRANSPARENCY AND FREEDOM OF INFORMATION**

- 21.1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Supplier agrees that the Agreement and the Tender Documents will be published by the Authority on a designated web site save where to do so would disclose information the disclosure of which would:
- 21.1.1 contravene the provisions of Clause 20 (*Confidentiality*);
  - 21.1.2 be contrary to regulation 21 of the Public Contracts Regulations 2015; or
  - 21.1.3 in the reasonable opinion of the Authority be prevented by virtue of one or more of the exemptions in the Freedom of Information Act 2000 or one or more of the exceptions in the Environmental Information Regulations 2004.
- 21.2 If any of the situations in Clauses 21.1.1 to 21.1.3 apply, the Supplier consents to the Agreement or Tender Documents being redacted by the Authority to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.
- 21.3 In order to comply with the Government's policy on transparency in the area of contract performance the Supplier agrees that performance against KPI 1, KPI 9 and KPI 10 of Schedule 2.2 (*Performance Level/s*) will be published by the Authority on a designated web site save where to do so would disclose information the disclosure of which would:



- 21.3.1 contravene the provisions of Clause 20 (*Confidentiality*);
  - 21.3.2 be contrary to regulation 21 of the Public Contracts Regulations 2015; or
  - 21.3.3 in the reasonable opinion of the Authority be prevented by virtue of one or more of the exemptions in the Freedom of Information Action 2000 or one or more of the exceptions in the Environmental Information Regulations 2004.
- 21.4 The Authority shall agree with the Supplier the Supplier's performance against KPI 1, KPI 9 and KPI 10 in advance of any publication.
- 21.5 The Supplier acknowledges that the Authority and Service Recipients are subject to the requirements of the FOIA and the EIRs. The Supplier shall:-
- 21.5.1 provide all necessary assistance and cooperation as reasonably requested by the Authority and Service Recipients to enable the Authority and Service Recipients to comply with its obligations under the FOIA and EIRs;
  - 21.5.2 transfer to the Authority (or at the Authority's request the relevant Service Recipient) all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 21.5.3 provide the Authority (or at the Authority's request the relevant Service Recipient) with a copy of all Information held on behalf of the Authority and Service Recipients which is requested in a Request For Information and which is in its possession or control in the form that the Authority or Service Recipient requires within five (5) Working Days (or such other period as the Authority or Service Recipient may reasonably specify) of the Authority's or Service Recipient's request for such Information; and
  - 21.5.4 not respond directly to a Request For Information addressed to the Authority or a Service Recipient unless authorised in writing to do so by the Authority.
- 21.6 The Supplier acknowledges that the Authority or a Service Recipient may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority or Service Recipient shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority or Service Recipient shall be responsible for determining in its absolute discretion whether any information (including Commercially Sensitive Information) is exempt from disclosure in accordance with the FOIA and EIRs.

## 22. PROTECTION OF PERSONAL DATA

### Arrangement between the Parties

- 22.1 The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate that during the term of the Agreement:-
- 22.1.1 the Authority and/or applicable Service Recipient shall be the Controller of the (i) Authority Personal Data, (ii) Authority's Contact Data for its own internal business purposes and (ii) where it is Processed by the Authority in accordance with Clause 22.2, the Supplier's Contact Data;
  - 22.1.2 the Supplier shall be the Controller of the (i) Supplier's Contact Data for its own internal business purposes and (ii) where the Authority's Contact Data is Processed by it in accordance with Clause 22.2, the Authority's Contact Data; and

- 22.1.3 the Supplier shall be the Processor in relation to its Processing of the Authority Personal Data which have been made available to the Supplier by the Authority (whether directly or indirectly) for the purpose of performing the Services.
- 22.2 The Parties each acknowledge and agree that they may need to Process Contact Data (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Services; (b) request and receive the Services; (c) compile, dispatch and manage the payment of invoices relating to the Services; (d) manage the Agreement and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Services; and (f) comply with their respective regulatory and other compliance obligations.
- 22.3 Each Party shall Process the other Party's Contact Data for the purposes set out in Clause 22.2 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share the other Party's Contact Data with their Affiliates and other relevant parties, within the UK, in order to carry out the activities listed in Clause 22.2, and in doing so each Party will ensure that the sharing and use of this Contact Data complies with applicable Data Protection Legislation.
- 22.4 The Supplier shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Supplier or the Authority or Service Recipients to breach any of their respective obligations under the DPA.
- 22.5 Each of the Parties acknowledges and agrees that the Appendix to the Supplier Solution contains an accurate description of:-
- 22.5.1 the subject matter of the Processing;
- 22.5.2 the duration of the Processing;
- 22.5.3 the nature and purpose of the Processing;
- 22.5.4 the type of Personal Data being Processed; and
- 22.5.5 the categories of Data Subjects.

#### **Processor Obligations**

- 22.6 Where the Supplier is processing Personal Data as a Processor for the Authority and/or Service Recipients, the Supplier shall:-
- 22.6.1 process the Personal Data only for the purpose of performing its obligations under this Agreement or otherwise on the instructions of the Authority or relevant Service Recipient. Unless prohibited by law, if the Supplier is required by European Union law (or the law of one of the Member States of the European Union) or UK law (following the Exit Day) to act other than in accordance with the instructions of the Authority or relevant Service Recipient, the Supplier shall (unless prohibited by such law) promptly, and in any event within twenty-four (24) hours of becoming aware of the same, notify the Authority and relevant Service Recipient;
- 22.6.2 hold the Authority Personal Data it is processing on behalf of the Authority and/or Service Recipients separately from other data or information processed by the Supplier;
- 22.6.3 implement appropriate technical and organisational measures to safeguard the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure which are sufficient to comply with the obligations placed upon Authority or Service Recipient (as Controller) and the Supplier (as Processor) in accordance with the Data Protection Legislation and those under this Agreement (including the measures set out in the Authority Requirements) and upon request provide to the Authority evidence of its compliance with such requirements;
- 22.6.4 ensure that all employees or agents required to access the Personal Data are informed of

the confidential nature of the Personal Data and have entered into an appropriate contractual agreement that requires them to keep the Personal Data confidential;

22.6.5 not sub-contract any Processing of the Personal Data, replace an existing sub-contractor who is Processing the Personal Data or alter the scope or location of Processing carried out by an existing sub-contractor (a "**sub-processing change**") unless all of the following have been met:-

- (a) the Supplier has given the Authority not less than sixty (60) days' written notice of the relevant sub-processing change;
- (b) the Supplier has undertaken due diligence on the sub-contractor with all due skill and care, including a risk assessment of the information governance related practices and processes of the sub-contractor and has established that the outcome of the due diligence is a determination that the sub-contractor and the arrangements made for the sub-processing would objectively be adequate and sufficient to ensure compliance with the applicable requirements of the DPA, and has given notice of the outcome to the Authority;
- (c) the Supplier undertakes to ensure that the sub-processing contract will be on terms that are substantially the same as the terms set out in this Clause 22; and
- (d) the Authority has not objected to the use of the sub-processor within the period of notice provided by the Supplier (or if longer, the period of sixty (60) days following service of notice);

22.6.6 notify the Authority promptly (and in any event within five (5) Working Days) following its receipt from a Data Subject, the Information Commissioner or any third party of a request, complaint, communication or Regulator Correspondence and:-

- (a) not disclose any Personal Data in response to any such request or correspondence without the consent of the Authority;
- (b) provide the Authority with full co-operation and assistance (including providing copies of all data held) as required by the Authority in relation to any such complaint or request made or Regulator Correspondence received; and
- (c) provide data promptly and so as to enable the Authority and each Service Recipient to comply with any relevant timescales set out in the Data Protection Legislation and otherwise in accordance with the Authority's and relevant Service Recipient's instructions;

22.6.7 notify the Authority promptly and in any event within twelve (12) hours upon becoming aware of any actual or suspected breach of Clause 22.6.3 and:-

- (a) promptly provide the Authority with a report containing all the circumstances and details in relation to the Personal Data breach, including those specified in Article 33(3) of the GDPR;
- (b) assist the Authority and Service Recipients to make any notifications to the Information Commissioner and affected Data Subjects and co-operate with the Authority, Service Recipients, the Information Commissioner and any other regulatory bodies as required;
- (c) provide any information requested by the Authority, Service Recipients, the Information Commissioner and/or any other regulatory bodies in relation to the breach;
- (d) investigate the incident and its cause;

- (e) seek to recover the compromised data and as soon as practicable and implement any measures necessary to restore the security of the Personal Data;
  - (f) comply with all applicable guidance (including Information Commissioner guidance);
  - (g) co-ordinate with the Authority with respect to the management of public relations and public statements relating to the incident and make no public statement in relation to the incident unless the Authority has provided its specific written consent to such statement;
- 22.6.8 provide the Authority with full cooperation and assistance to ensure compliance with its obligations under the DPA including:-
- (a) obligations relating to the security and integrity of the Personal Data; and
  - (b) undertaking any data protection impact assessments (as required by the DPA);
- 22.6.9 notify the Authority immediately if it considers in its opinion any of its instructions infringe the DPA;
- 22.6.10 not transfer any Personal Data outside the United Kingdom except as permitted by the Authority in writing and, in granting consent to the transfer, the Authority may impose additional terms on the Processing of the Personal Data on the Supplier and/or the data importer (as applicable), including incorporating the Standard Contractual Clauses and/or a direct data processing agreement; and
- 22.6.11 upon the expiry or termination of the Agreement or otherwise at any time where required by at Authority's option or direction, arrange for the prompt and safe return and/or secure permanent destruction (in accordance with HMG IA Standard No. 5 Secure Sanitisation of Protectively Marked or Sensitive Information) of any and/or all Authority Personal Data, together with all copies in its or its sub-contractors' possession or control within seven (7) days and, where requested by the Authority, certify that such destruction has taken place.

#### **Variation**

- 22.7 If at any time, in the Authority's opinion, the Authority needs to amend this Agreement in order to comply with its obligations under Data Protection Legislation, including Article 28 of the GDPR, the Supplier agrees to enter into a written variation of this Agreement to make the amendments which in the Authority's opinion are required. In the event such amendments are not able to be agreed, the Parties acknowledge and agree that no further Processing of the Personal Data under this Agreement will be carried out until such variation has been agreed and executed unless directed otherwise by the Authority in writing and then in those circumstances the Supplier may only continue to Process Authority Data in accordance with the Authority's written directions
23. **PUBLICITY AND BRANDING**
- 23.1 The Supplier shall not:-
- 23.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
  - 23.1.2 use the Authority's or a Service Recipient's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 23.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself

in such a way as to imply or express any such approval or endorsement.

## **SECTION G - LIABILITY, INDEMNITIES AND INSURANCE**

### **24. LIMITATIONS ON LIABILITY**

#### **Unlimited liability**

24.1 Neither Party limits its liability for:-

- 24.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- 24.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 24.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 24.1.4 any liability to the extent it cannot be limited or excluded by Law.

24.2 The Supplier's liability in respect of the indemnities in Clause 9.5 (VAT), Clause 13.3 (*Employment Indemnity*) and Clause 13.4 (*Income Tax and National Insurance Contributions*) shall be unlimited.

#### **Financial and other limits**

24.3 Subject to Clauses 24.1 and 24.2 (*Unlimited Liability*) and Clauses 24.5 and 24.6 (*Consequential losses*):-

- 24.3.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority or a Service Recipient (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £2,000,000 (two million pounds);
- 24.3.2 the Supplier's aggregate liability in respect of Clause 18 (*IPRs Indemnity*) and Schedule 9.1 (*Staff Transfer*) that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £3,000,000 (three million pounds);
- 24.3.3 the Supplier's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £3,000,000 (three million pounds);
- 24.3.4 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority and Service Recipients under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:-
  - (a) in relation to Defaults occurring during each Contract Year, an amount equal to £1,500,000 (one million five hundred thousand pounds);
  - (b) in relation to Defaults occurring after the end of the Term, an amount equal to £1,500,000 (one million five hundred thousand pounds).

24.4 Subject to Clause 24.1 (*Unlimited Liability*) and Clause 24.5 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

- 24.4.1 the Authority's and Service Recipients' total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 29.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 29.3 (*Termination by the Supplier*) shall in no event exceed the following amounts:-

- (a) for a termination taking effect prior to the expiry of the first Contract Year, £1,500,000 (one million five thousand pounds); and
  - (b) for a termination taking effect on and following such expiry, zero; and
- 24.4.2 the Authority's and Service Recipients' aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed £1,500,000 (one million five hundred thousand pounds).

### **Consequential Losses**

- 24.5 Subject to Clauses 24.1 and 24.2 (*Unlimited Liability*) and Clause 24.6, neither Party shall be liable to the other Party for:-
- 24.5.1 any indirect, special or consequential Loss; or
  - 24.5.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 24.6 Notwithstanding Clause 24.5 but subject to Clause 24.3, the Supplier acknowledges that the Authority and Service Recipients may, amongst other things, recover from the Supplier the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Agreement to the extent that they arise as a result of a Default by the Supplier.
- 24.7 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

### **Mitigation**

- 24.8 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

### **25. INSURANCE**

The Supplier shall comply with the provisions of Schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

## **SECTION H – REMEDIES AND RELIEF**

### **26. RECTIFICATION PLAN PROCESS**

- 26.1 In the event that:-
- 26.1.1 there is, or is reasonably likely to be, a Delay;
  - 26.1.2 any failure of the Supplier to remedy any breach of its obligations in Clause 5.6.1 and Clauses 5.6.3 to 5.6.7 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority;
  - 26.1.3 in any Service Period there has been:-
    - (a) a Material KPI Failure; and/or
    - (b) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and

regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

#### **Notification**

26.2 If:-

26.2.1 the Supplier notifies the Authority pursuant to Clause 26.1 that a Notifiable Default has occurred; or

26.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

26.3 The "**Rectification Plan Process**" shall be as set out in Clauses 26.4 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

#### **Submission of the draft Rectification Plan**

26.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 26.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

26.5 The draft Rectification Plan shall set out:-

26.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;

26.5.2 the actual or anticipated effect of the Notifiable Default; and

26.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

26.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

#### **Agreement of the Rectification Plan**

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

26.7.1 is insufficiently detailed to be capable of proper evaluation;

26.7.2 will take too long to complete;

26.7.3 will not prevent reoccurrence of the Notifiable Default; and/or

26.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

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

26.9 If the Authority consents to the Rectification Plan:-

26.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and

26.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default.

## 27. **AUTHORITY CAUSE**

27.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:-

27.1.1 Achieve a Milestone by its Milestone Date;

27.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

27.1.3 comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-performance- would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 27):-

(a) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-performance- was caused by the Authority Cause;

(b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-performance- to terminate this Agreement pursuant to Clause 29.1.2 (*Termination by the Authority*);

(c) where the Supplier Non-performance- constitutes the failure to Achieve a Milestone by its Milestone Date:-

(i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause; and

(ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and/or

(d) where the Supplier Non-performance- constitutes a Performance Failure:-

(i) the Supplier shall not be liable to accrue Service Credits; and

(ii) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,



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in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

- 27.2 In order to claim any of the rights and/or relief referred to in Clause 27.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-performance-, give the Authority notice (a "**Relief Notice**") setting out details of:-
- 27.2.1 the Supplier Non-performance-;
  - 27.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
  - 27.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
  - 27.2.4 the relief claimed by the Supplier.
- 27.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-performance- and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 27.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including the duration and consequences of any Delay or anticipated Delay.
- 27.5 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to:-
- 27.5.1 whether a Supplier Non-performance- would not have occurred but for an Authority Cause; and/or
  - 27.5.2 the nature and/or extent of the relief claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-performance-.
- 27.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 27 shall be implemented in accordance with the Change Control Procedure.
28. **FORCE MAJEURE**
- 28.1 Subject to the remaining provisions of this Clause 28 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan*)), a Party may claim relief under this Clause 28 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 28.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

- 28.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 28 to the extent that consequences of the relevant Force Majeure Event:-
- 28.3.1 are capable of being mitigated by any of the Services including the Service Continuity Services and the obligation to ensure that the Software complies with the security requirements under this Agreement (including with respect to the security of the Authority Data), but the Supplier has failed to do so; and/or
- 28.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 28.4 Subject to Clause 28.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 28.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 28.6 Where, as a result of a Force Majeure Event:-
- 28.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:-
- (a) where the Affected Party is the Supplier, the Authority shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 29.1.3 (Termination by the Authority); and
- (b) neither Party shall be liable for any Default arising as a result of such failure;
- 28.6.2 the Supplier fails to perform its obligations in accordance with this Agreement, the Authority shall not be entitled to receive Service Credits to the extent that a Performance Failure has been caused by the Force Majeure Event;
- 28.6.3 the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 28.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 28.8 Relief from liability for the Affected Party under this Clause 28 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 28.7.

## **SECTION I – TERMINATION AND EXIT MANAGEMENT**

### **29. TERMINATION RIGHTS**

#### **Termination by the Authority**

- 29.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:-
- 29.1.1 for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the

Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

- 29.1.2 if a Supplier Termination Event occurs;
- 29.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- 29.1.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

29.2 Where the Authority:-

- 29.2.1 has the right to terminate this Agreement under Clause 29.1.1 (*Termination by the Authority*), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement, including any part of the provision of the Services or the provision of the Services to any Service Recipient; and/or
- 29.2.2 is terminating this Agreement under Clause 29.1.2 due to the occurrence of either paragraph (b) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 29.2.3 has the right to terminate this Agreement under Clause 29.1.2 or Clause 29.1.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

**Termination by the Supplier**

- 29.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds the Annual Contract Value for the Term or Extension Period and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier. Following such Termination Notice, this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than sixty (60) Working Days from the date of the issue of the Termination Notice).

**Partial Termination**

- 29.4 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:-
  - 29.4.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
  - 29.4.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
  - 29.4.3 the Supplier shall not be entitled to reject the Change.

## 30. CONSEQUENCES OF EXPIRY OR TERMINATION

### General Provisions on Expiry or Termination

- 30.1 The provisions of Clauses 5.7 (*Specially Written Software warranty*), 9.4 and 9.5 (VAT), 9.7 (*Set-off and Withholding*), 11 (*Records, Reports, Audits and Open Book Data*), 13.3 (*Employment Indemnity*), 13.4 (*Income Tax and National Insurance Contributions*), 15 (*Intellectual Property Rights*), 16 (*Licences Granted by the Supplier*), 18.1 (*IPRs Indemnity*), 20 (*Confidentiality*), 21 (*Transparency and Freedom of Information*), 22 (*Protection of Personal Data*), 24 (*Limitations on Liability*), 30 (*Consequences of Expiry or Termination*), 36 (*Severance*), 38 (*Entire Agreement*), 39 (*Third Party Rights*), 41 (*Disputes*) and 42 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.5 (*Financial and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*) and 9.1 (*Staff Transfer*), and each Party's accrued rights and liabilities, shall survive the termination or expiry of this Agreement.

### Exit Management

- 30.2 The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

### Payments by the Authority

- 30.3 If this Agreement is terminated by the Authority pursuant to Clause 29.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 29.3 (*Termination by the Supplier*), the Authority shall pay the Supplier the sum specified in Clause 24.4.1 (*Financial and other Limits*) (which shall be the Supplier's sole remedy for the termination of this Agreement).
- 30.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 29.1.1, 29.1.3 and/or 29.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:-
- 30.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
  - 30.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date.
- 30.5 The costs of termination incurred by the Parties shall lie where they fall if:-
- 30.5.1 the Authority terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 29.1.3 or 29.2.3 (*Termination by the Authority*); or
  - 30.5.2 the Authority terminates this Agreement under Clause 29.1.4.

### Payments by the Supplier

- 30.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

## **SECTION J - MISCELLANEOUS AND GOVERNING LAW**

### **31. COMPLIANCE**

#### **Health and Safety**

- 31.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:-
- 31.1.1 all applicable Law regarding health and safety; and
  - 31.1.2 the Health and Safety Policy whilst at the Authority Premises.
- 31.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **Equality and Diversity**

- 31.3 The Supplier shall:-
- 31.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:-
    - (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (b) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
    - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority or Service Recipients at any time under applicable equality Law;
  - 31.3.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### **Official Secrets Act and Finance Act**

- 31.4 The Supplier shall comply with the provisions of:-
- 31.4.1 the Official Secrets Acts 1911 to 1989; and
  - 31.4.2 section 182 of the Finance Act 1989.

### **32. ASSIGNMENT AND NOVATION**

- 32.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 32.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:-
- 32.2.1 any Central Government Body; or

32.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 32.2.

32.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 32.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

32.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under paragraph (i) of the definition of Supplier Termination Event (as if references in that paragraph (i) to the Supplier and the Guarantor were references to the Successor Body).

### 33. **WAIVER AND CUMULATIVE REMEDIES**

33.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

### 34. **RELATIONSHIP OF THE PARTIES**

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

34.2 Notwithstanding anything to the contrary in this Agreement, the Supplier acknowledges that it is not, and nor will it be, the exclusive supplier of the Services or any other similar goods and services to the Authority and/or the Service Recipients and that the Authority and Service Recipients may perform, or engage a third party to provide any or all of the Services or any similar services.

### 35. **PREVENTION OF FRAUD AND BRIBERY**

35.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:-

35.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

35.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

35.2 The Supplier shall not during the term of this Agreement:-

35.2.1 commit a Prohibited Act; and/or

35.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

35.3 The Supplier shall during the term of this Agreement:-

35.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

35.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;

35.3.3 keep appropriate records of its compliance with its obligations under Clause 35.3.1 and make such records available to the Authority on request; and

35.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.

35.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 35.1 and/or 35.2, or has reason to believe that it has or any of the Supplier Personnel have:-

35.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

35.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

35.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

35.5 If the Supplier makes a notification to the Authority pursuant to Clause 35.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 11 (Records, Reports, Audits and Open Book Data).

35.6 If the Supplier is in Default under Clauses 35.1 and/or 35.2, the Authority may by notice:-

35.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or

35.6.2 immediately terminate this Agreement.

35.7 Any notice served by the Authority under Clause 35.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## 36. SEVERANCE

If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable

be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

37. **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 reasonably necessary to give effect to the meaning of this Agreement.

38. **ENTIRE AGREEMENT**

38.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

38.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

38.3 Nothing in this Clause 38 shall exclude any liability in respect of misrepresentations made fraudulently.

39. **THIRD PARTY RIGHTS**

39.1 The provisions of this Agreement confer benefits on the Service Recipients and, in addition, the provisions of Clause 18.1 (*IPRs Indemnity*), paragraphs 2.1, 2.6, 3.1 and 3.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (*Staff Transfer*) and the provisions of paragraph 6.9 of Schedule 8.5 (*Exit Management*) confer benefits on persons named in such provisions other than the Parties (such provisions together being referred to as "**Third Party Provisions**") and each Service Recipient and each such person being referred to as a "**Third Party Beneficiary**"). The Third Party Provisions are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

39.2 In respect of any Losses suffered by any or all of the Third Party Beneficiaries in connection with this Agreement:

39.2.1 such Losses shall be deemed to be suffered by the Authority and, to the extent they would be recoverable from the Supplier under this Agreement had they been Losses suffered by the Authority, shall be recoverable by the Authority against the Supplier; and

39.2.2 the exercise of any right or the commencement of civil proceedings shall be brought solely by the Authority unless it is expressly prevented by a first instance decision of the English courts from exercising a right or commencing civil proceedings in respect of any Losses or right of action on behalf of the relevant Third Party Beneficiary on the basis that the Authority is not an interested party.

39.3 Subject to Clauses 39.1 and 39.2, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

39.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 39.1, may be altered or extinguished by the Parties without the consent of any Third Party Beneficiary.

40. **NOTICES**

40.1 Any notices sent under this Agreement must be in writing.

40.2 Subject to Clause 40.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:-



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

- 40.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:-

	Supplier	Authority
<b>Contact</b>	Nick James	Rachel Berrisford
<b>Address</b>	Atamis South Gate House Wood Street Cardiff CF10 1EW	Herdus House Ingwell Drive Westlakes Science & Technology Park Moor Row CA24 3HU
<b>Email</b>	nick.james@atamis.co.uk	Rachel.Berrisford@nda.gov.uk

- 40.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 40.2:-

40.4.1 Force Majeure Notices;

40.4.2 notices issued by the Supplier pursuant to Clause 29.3 (*Termination by the Supplier*);

40.4.3 Termination Notices; and

40.4.4 Dispute Notices.

- 40.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 40.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For<sup>TM</sup> 1st Class delivery (as set out in the table in Clause 40.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

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40.6 This Clause 40 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

41. **DISPUTES**

41.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

41.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

42. **GOVERNING LAW AND JURISDICTION**

42.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

42.2 Subject to Clause 41 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

43. **COUNTERPARTS/DUPLICATES**

43.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.

43.2 This Agreement may be executed in duplicate, each of which shall constitute an original.

**IN WITNESS** of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

<b>Signed for and on behalf of the NUCLEAR DECOMMISSIONING AUTHORITY:</b>	<div>..... (Signed)</div> <div>(Name) Director</div> <div>..... (Signed)</div> <div>(Name) Director</div>
<b>Signed for and on behalf of ATAMIS LTD</b>	<div>..... (Signed)</div> <div>(Name and position)</div>

**LIST OF SCHEDULES**

Schedule 1	Definitions
Schedule 2.1	Services Description
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Schedule 8.7	Conduct of Claim
Schedule 9.1	Staff Transfer
Schedule 10	[Not used]

## SCHEDULE 1

### Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

<b>"Accounting Reference Date"</b>	means the dates to which the Supplier prepares its audited financial statements;
<b>"Accreditation"</b>	means the assessment of the Core Information Management System in accordance with paragraph 6 of Schedule 2.4 ( <i>Security Management</i> ) by the Authority or an independent information risk manager/professional appointed by the Authority, which results in an Accreditation Decision;
<b>"Accreditation Decision"</b>	means the decision of the Authority, taken in accordance with the process set out in paragraph 6 Schedule 2.4 ( <i>Security Management</i> ), to issue the Supplier with a Risk Management Approval Statement or a Risk Management Rejection Notice in respect of the Core Information Management System;
<b>"Accreditation Plan"</b>	means the Supplier's plan to attain an Accreditation Approval Statement from the Authority, which is prepared by the Supplier and approved by the Authority in accordance with paragraph 5.4 of Schedule 2.4 ( <i>Security Management</i> )
<b>"Achieve"</b>	means in respect of a Milestone, that the Milestone has been achieved and the relevant component items (including Deliverables) and activities comprised within the Milestone have been performed and a Milestone Achievement Certificate in respect of that Milestone has been issued in accordance with the provisions of Schedule 6.2 ( <i>Milestone Achievement Procedure</i> ),  and <b>"Achieved"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Achievement Criteria"</b>	means, in respect of any Milestone, the relevant criteria specified in this Agreement or, where no criteria are so specified, the criteria agreed by the Parties including in the Implementation Plan or a Change Authorisation Note (as applicable)
<b>"Acquired Rights Directive"</b>	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
<b>"Additional Development"</b>	means any unforeseen development tasks or projects post System implementation e.g. the implementation of an additional Application Programming Interface to an external government database.
<b>"Additional Milestone"</b>	means a Milestone which is additional to the Milestones set out in the Implementation Plan and will apply to the provision of Services as part of a Project or in connection with the Change Control Procedure;
<b>"Additional Services"</b>	mean any ad hoc requirements post System implementation e.g. changes to System branding or additional Authority training post System implementation.
<b>"Affected Party"</b>	means the Party seeking to claim relief in respect of a Force Majeure Event;

<b>"Affiliate"</b>	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 with, that body corporate from time to time;
<b>"Annual Contract Value"</b>	means the Contract Award Value for the Term or Extension Period of the Agreement divided by the duration of that respective Term or Extension Period, e.g. the Annual Contract Value for an agreement with a four (4) year Term and Contract Award Value of £100,000 is equal to £25,000.
<b>"Annual Revenue"</b>	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:-</p> <ol style="list-style-type: none"> <li>(a) figures for accounting periods of other than twelve (12) months should be scaled pro rata to produce a proforma figure for a twelve (12) month period; and</li> <li>(b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;</li> </ol>
<b>"Applicable Supplier Personnel"</b>	<p>means any Supplier Personnel who:-</p> <ol style="list-style-type: none"> <li>a. at the Termination Date:- <ol style="list-style-type: none"> <li>i. are employees of the Supplier</li> <li>ii. are Dedicated Supplier Personnel</li> <li>iii. have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations and</li> </ol> </li> <li>b. are dismissed or given notice of dismissal by the Supplier within:- <ol style="list-style-type: none"> <li>i. <u>forty (40)</u> Working Days of the Termination Date or</li> <li>ii. such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement and</li> </ol> </li> <li>c. have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier and</li> <li>d. the Supplier can demonstrate to the satisfaction of the Authority <ol style="list-style-type: none"> <li>i. are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers</li> <li>ii. are genuinely being dismissed for reasons of redundancy and</li> <li>iii. have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees.</li> </ol> </li> </ol>
<b>"Application Programming Interface"</b>	or "API" means a piece of software that facilitates access to the Supplier's application(s) to provide access to business functionality and/or Authority Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at:

<https://www.gov.uk/guidance/gdsapitechnicalanddatastandards>

<b>"Assets"</b>	means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
<b>"Associated Person"</b>	has the meaning given to it in section 44(4) of the Criminal Finances Act 2017;
<b>"Associates"</b>	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
<b>"Assurance"</b>	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
<b>"Audit"</b>	means any exercise by the Authority of its Audit Rights pursuant to Clause 11 ( <i>Records, Reports, Audit and Open Book Data</i> ) and Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>"Audit Agents"</b>	means:- <ul style="list-style-type: none"><li>(a) the Authority's internal and external auditors;</li><li>(b) the Authority's statutory or regulatory auditors;</li><li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li><li>(d) HM Treasury or the Cabinet Office;</li><li>(e) any party formally appointed by the Authority to carry out audit or similar review functions;</li><li>(f) a Service Recipient or any person falling within the scope of Paragraphs (a), (b) or (e) with respect to the Service Recipient; and</li><li>(g) successors or assigns of any of the above;</li></ul>
<b>"Audit Rights"</b>	means the audit and access rights referred to in Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>"Authority Assets"</b>	means the Authority Materials, the Authority's or Service Recipient's infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority or any Service Recipient and which is or may be used in connection with the provision or receipt of the Services;
<b>"Authority Background IPRs"</b>	means:- <ul style="list-style-type: none"><li>(a) IPRs owned by the Authority or a Service Recipient before the Effective Date, including IPRs contained in any of the Authority's or Service Recipient's knowhow, documentation, processes and procedures;</li><li>(b) IPRs created by the Authority or a Service Recipient independently of this Agreement; and/or</li></ul>

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- (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;

**"Authority Cause"**

means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:-

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

**"Authority Change Manager"**

means the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;

**"Authority Data"**

means:-

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:-
  - (i) supplied to the Supplier by or on behalf of the Authority or a Service Recipient; and/or
  - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority or a Service Recipient is the Data Controller;

**"Authority Materials"**

means the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority or a Service Recipient to the Supplier, the IPRs in which:-

- (a) are owned or used by or on behalf of the Authority or a Service Recipient; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Licensed Software;

**"Authority Personal Data"**

means the Authority Data that constitutes Personal Data (such being anticipated to fall within the scope of the description set out in the Appendix to the Supplier Solution) where such Personal Data is Processed by either Party under this Agreement;

**"Authority Premises"**

means premises owned, controlled or occupied by the Authority, a Service Recipient and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

**"Authority Representative"**

means the representative appointed by the Authority pursuant to Clause 10.2 (*Representatives*), as notified to the Authority from time to time;

**"Authority Requirements"**

means the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Levels*), 2.3 (*Standards*), 2.4 (*Security Management*), 2.5 (*Insurance Requirements*), 6.1 (*Implementation Plan*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*) and

8.6 (*Service Continuity Plan*) and those set out in a Change Authorisation Note for a Project;

<b>"Authority Responsibilities"</b>	means the responsibilities of the Authority specified in Schedule 3 ( <i>Authority Responsibilities</i> );
<b>"Authority System"</b>	means the Authority's and Service Recipients' computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority, a Service Recipient or the Supplier in connection with this Agreement which is owned by the Authority or a Service Recipient or licensed to either of them by a third party and which interfaces with the Supplier System or which is necessary for the Authority and/or Service Recipients to receive the Services;
<b>"Available"</b>	has the meaning given in paragraph 1.2 of Part 2 of Appendix 1 in Schedule 2.2 ( <i>Performance Levels</i> );
<b>"Baseline Security Requirements"</b>	means the Authority's baseline security requirements, the current copy of which is contained in Appendix 1 of Schedule 2.4 ( <i>Security Management</i> ), as updated from time to time by the Authority and notified to the Supplier;
<b>"Beneficiary"</b>	has the meaning given in paragraph 1.1 of Schedule 8.7 ( <i>Conduct of Claims</i> );
<b>"Boards"</b>	means the Joint Implementation Board, or Commercial Systems Governance Board.
<b>"Board Member"</b>	means the initial persons appointed by the Authority and Supplier to the Boards or Forums as set out in Appendix 1 of Schedule 8.1 ( <i>Governance</i> ) and any replacements from time to time agreed by the Parties in accordance with paragraph 3.3 of Schedule 8.1 ( <i>Governance</i> );
<b>"Breach of Security"</b>	<p>means the occurrence of:-</p> <ol style="list-style-type: none"><li>any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System and/or any information or data (including the Confidential Information and the Authority Data) used by the Authority, the Supplier or any Subcontractor in connection with this Agreement;</li><li>the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including copies of such information or data, used by the Authority, the Supplier or any Subcontractor in connection with this Agreement; and/or</li><li>any part of the Supplier System ceasing to be compliant with the Certification Requirements,</li></ol> <p>in each case as more particularly set out in the security requirements in Schedule 2.1 (<i>Services Description</i>) and the Baseline Security Requirements;</p>
<b>"Breakage Costs Payment"</b>	an amount equal to the Contract Breakage Costs as at the Termination Date as determined in accordance with paragraph 3 of Schedule 7.2 (Payments on Termination);
<b>"Business Continuity Plan"</b>	has the meaning given in paragraph 1.2.1(b) of Schedule 8.6 ( <i>Service Continuity Plan</i> );



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<b>"Business Continuity Services"</b>	has the meaning given in paragraph 3.2.2 of Schedule 8.6 ( <i>Service Continuity Plan</i> );
<b>"Cabinet Office Markets and Suppliers Team"</b>	means the UK government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
<b>"Call Answering Time"</b>	means the time taken for a Help Desk operative to answer a voice call, i.e. not a voicemail automatic answering service
<b>"CaSIE"</b>	means government's Contracts and Spend Insight Engine online tool, developed on the Microsoft Power BI application to analyse contract and spend data across the public sector.
<b>"CEDR"</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU.
<b>"Central Government Body"</b>	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:-</p> <ul style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-Ministerial Department; or</li><li>(d) Executive Agency;</li></ul>
<b>"Certification Requirements"</b>	means the requirements set out in paragraph 7 of Schedule 2.4 ( <i>Security Management</i> );
<b>"Change"</b>	<p>means each:-</p> <ul style="list-style-type: none"><li>(a) Contract Change;</li><li>(b) Document Change; and</li><li>(c) Operational Change;</li></ul>
<b>"Change Authorisation Note"</b>	means a form setting out an agreed Contract Change which shall be substantially in the form of Appendix 2 of Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>"Change Communication"</b>	means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>"Change Control Procedure"</b>	means the procedure for changing this Agreement and commissioning Projects as set out in Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>"Change in Law"</b>	means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
<b>"Change Request"</b>	means a written request for a Contract Change substantially in the form of Appendix 1 of Schedule 8.2 ( <i>Change Control Procedure</i> );

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<b>"Chargeable Change"</b>	has the meaning given to it in paragraph 2.3.1 of Schedule 8.2 ( <i>Change Control Procedure</i> )
<b>"Charges"</b>	means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ), including any Milestone Payment or Service Charge;
<b>"Claim"</b>	has the meaning given in Paragraph 1.2 of Schedule 8.7 (Conduct of Claim)
<b>"Class 1 Transaction"</b>	has the meaning set out in the listing rules issued by the UK Listing Authority;
<b>"CNI"</b>	means Critical National Infrastructure;
<b>"Commercial Sensitive Information"</b>	<p>means the information listed in Schedule 4.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:-</p> <ul style="list-style-type: none"><li>(a) the pricing of the Services;</li><li>(b) the details of the Supplier's IPRs; and</li><li>(c) the Supplier's business and investment plans</li></ul> <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.</p>
<b>"Commercial Systems Governance Board"</b>	means the body described in paragraph 5 of Schedule 8.1 ( <i>Governance</i> )
<b>"Comparable Supply"</b>	means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
<b>"Confidential Information"</b>	<p>means:-</p> <ul style="list-style-type: none"><li>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:-<ul style="list-style-type: none"><li>(i) the Disclosing Party Group; or</li><li>(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, knowhow and/or personnel of the Disclosing Party Group;</li></ul></li><li>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;</li><li>(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and</li></ul>

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(d) Information derived from any of the above,  
but not including any Information which:-

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a nonconfidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:-
  - (1) performance under this Agreement; or
  - (2) failure to pay any Subcontractor as required pursuant to Clause 14.5.1 (*Supply Chain Protection*);

<b>"Contract Award Value"</b>	the monetary value of the contract awarded for the Term (or Extended Term should the option to extend be invoked) as at the time of contract award. The value of the Term is <b>£3,446,423</b> ;
<b>"Contract Change"</b>	means any change to this Agreement, including a Project, other than an Operational Change or Document Change;
<b>"Contracts and Spend Insight Engine"</b>	means government's online tool, developed on the Microsoft Power BI application to analyse contract and spend data across the public sector;
<b>"Contact Data"</b>	means the Personal Data of each Party's Employees Processed by the other Party, under, or in connection with, this Agreement;
<b>"Contract Breakage Costs"</b>	the amounts payable by the Supplier to its Key Subcontractors or other third parties (as applicable) for terminating all relevant Key Subcontracts or Third Party Contracts as a direct result of the early termination of this Agreement;
<b>"Contract Change"</b>	means any change to this Agreement, including commissioning a Project, other than an Operational Change or Document Change;
<b>"Contract Year"</b>	means:- <ul style="list-style-type: none"><li>(a) a period of twelve (12) months commencing on the Effective Date; or</li><li>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date,</li></ul> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>

<b>"Control"</b>	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;
<b>"Controlled Document"</b>	means a document on the List of Controlled Documents as set out in Appendix 3 of Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>"Controller"</b>	has the meaning given in the Data Protection Legislation;
<b>"Core Information Management System"</b>	means those information assets, ICT systems and/or Sites which will be used by the Supplier and/or its Subcontractors to Process Authority Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources), which the Authority has determined in accordance with paragraph 5 of Schedule 2.4 ( <i>Security Management</i> ) shall be subject to Accreditation;
<b>"Corporate Change Event"</b>	means:- <ul style="list-style-type: none"> <li>(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</li> <li>(b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;</li> <li>(c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;</li> <li>(d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;</li> <li>(e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;</li> <li>(f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the net asset value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any twelve (12) month period;</li> <li>(g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;</li> <li>(h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;</li> <li>(i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or</li> </ul>

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- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

**"Corporate Resolution Planning Information"**

means, together, the:-

- (a) Group Structure Information and Resolution Commentary; and
- (b) UK Public Sector and CNI Contract Information;

**"Costs"**

means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier or, as applicable, a Key Sub-contractor in providing the Services:-

- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:-
  - (i) base salary paid to the Supplier Personnel
  - (ii) employer's national insurance contributions
  - (iii) car allowances
  - (iv) any other contractual employment benefits
  - (v) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within paragraph (b) below) and
  - (vi) reasonable recruitment costs, as agreed with the Authority
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier or relevant Key Sub-contractor) any cost actually incurred by the Supplier in respect of those Assets
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier or relevant Key Sub-contractor in the delivery of the Services
- (d) Forecast Contingency Costs
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism

but excluding:-

- (f) Overhead
- (g) financing or similar costs

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(h) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise

(i) taxation

(j) fines and penalties and

non-cash items (including depreciation, amortisation, impairments and movements in provisions)

**"COTS"**

means Software (including open source software) and/or IPRs that:

(a) the relevant supplier (which may include the Supplier) makes generally available commercially (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price and has a Non-trivial Customer Base; or

(b) in respect of Software, is otherwise classified in Schedule 5 (*Software*) as COTS for the purposes of this Agreement, regardless of whether such Software satisfies paragraph (a);

**"Credit Rating Threshold"**

means the minimum failure score of 60 or equivalent for the Supplier of as reported by Dun and Bradstreet Limited (or equivalent financial risk company as may be updated from time to time);

**"Critical National Infrastructure"**

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:-

(a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or

(b) significant impact on national security, national defence, or the functioning of the UK;

**"Critical Performance Failure"**

means the Supplier accruing in aggregate twenty (20) or more Service Points (in terms of the number of points allocated) in any period of three (3) months.

**"Critical Service Contract"**

means the overall status of this Agreement as determined by the Authority and specified in paragraph 1.1 of Part 2 to Schedule 8.6 (*Service Continuity Plan*)

**"Crown Copyright"**

has the meaning given in the Copyright, Designs and Patents Act 1988;

**"CRP Information"**

means the Corporate Resolution Planning Information;

**"CRTPA"**

means the Contracts (Rights of Third Parties) Act 1999;

**"Data Handover Period"**

means a period commencing on the date on which the this Agreement terminates or expires and ending on the later of (a) six (6) months following such termination or expiry date and (b) the date on which the Authority Data has been fully transferred to the Authority, the relevant Service Recipient or a Replacement Supplier;

<b>"Data Protection Legislation"</b>	means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction as updated and amended from time to time which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject, including the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the GDPR and any code of practice or guidance published by the Information Commissioner or other regulator and/or, the European Data Protection Board. From the Exit Day, all legislation, regulator guidance or otherwise shall be as enacted in the UK or provided by the Information Commissioner or UK Government in respect of the protection of personal data;
<b>"Data Subject"</b>	has the meaning given in the Data Protection Legislation;
<b>"Data Subject Request"</b>	means a request or notice from a Data Subject exercising his or her rights under the Data Protection Legislation in relation to the Authority Personal Data;
<b>"Dedicated Supplier Personnel"</b>	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services
<b>"Deductions"</b>	means all Service Credits or any other deduction which is paid or payable to the Authority under this Agreement;
<b>"Default"</b>	<p>means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:-</p> <ul style="list-style-type: none"> <li>(a) in the case of the Authority, of its employees, servants, agents; or</li> <li>(b) in the case of the Supplier, of its Subcontractors or any Supplier Personnel,</li> </ul> <p>in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;</p>
<b>"Defect"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) any error, damage or defect in the manufacturing of a Deliverable; or</li> <li>(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>(c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or</li> <li>(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 Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the</li> </ul>

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relevant Deliverable from meeting its associated Test Success Criteria;

<b>"Delay"</b>	means:- <ul style="list-style-type: none"><li>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</li><li>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</li></ul>
<b>"Deliverable"</b>	means an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
<b>"Detailed Implementation Plan"</b>	means the plan developed and revised from time to time in accordance with paragraphs 3 and 4 of Schedule 6.1 ( <i>Implementation Plan</i> );
<b>"Dependent Parent Undertaking"</b>	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
<b>"Development Charges"</b>	mean charges for Additional Development;
<b>"Disaster"</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of twenty-four (24) hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
<b>"Disaster Recovery Plan"</b>	has the meaning given in paragraph 1.2.1(c) of Schedule 8.6 ( <i>Service Continuity Plan</i> );
<b>"Disaster Recovery Services"</b>	means the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>"Disaster Recovery System"</b>	mean the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>"Disclosing Party"</b>	has the meaning given in Clause 20.1 ( <i>Confidentiality</i> );
<b>"Disclosing Party Group"</b>	means:- <ul style="list-style-type: none"><li>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</li><li>(b) where the Disclosing Party is the Authority or a Service Recipient, the Authority, the Service Recipient and any Central Government Body with which the Authority, Service Recipient or the Supplier interacts in connection with this Agreement;</li></ul>
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs



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the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

**"Dispute Notice"**

means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

**"Dispute Resolution Procedure"**

means the dispute resolution procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*);

**"Document Change"**

means a change to any Controlled Document;

**"Document Change Procedure"**

means the procedure by which either Party can propose a Document Change in accordance with Schedule 8.2 (*Change Control Procedure*);

**"Documentation"**

means descriptions of the Services and Key Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf- components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:-

- (a) is required to be supplied by the Supplier to the Authority under this Agreement;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

**"DOTAS"**

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

**"DPA"**

means the Data Protection Act 2018;

**"Due Diligence Information"**

means any information supplied to the Supplier by or on behalf of the Authority or a Service Recipient prior to the Effective Date;

**"Effective Date"**

means the date on which this Agreement is signed by both Parties;

**"EIRs"**

means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

**"Emergency Exit"**

any termination of this Agreement which is a:-

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- (a) termination of the whole or part of this Agreement in accordance with Clause 29 (*Termination Rights*), except where the period of notice given under that Clause is greater than or equal to six (6) months
- (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 29 (*Termination Rights*) or
- (c) wrongful termination or repudiation of this Agreement by either Party;

**"Employee Liabilities"**

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

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

**"Employees"**

means all staff, including directors, officers and employees, as well as the agents and workers of either Party together with the directors, officers and employees of such Party's sub-contractors or suppliers and further down any contractual chain;

**"Employment Regulations"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive the estimated Charges payable by the Authority;

**"End User"**

means any person authorised by the Authority to use the IT Environment and/or the Services

**"ERP"**

means Enterprise Resource Planning system.

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"European Standard"	means in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
"Exclusive Assets"	those Assets used by the Supplier or a subcontractor which are used exclusively in the provision of the Services;
"Exit Day"	shall have the meaning in the European Union (Withdrawal) Act 2018;
"Exit Information"	has the meaning given in paragraph 3.1 of Schedule 8.5 ( <i>Exit Management</i> );
"Exit Management"	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 ( <i>Exit Management</i> );
"Exit Manager"	the person appointed by each Party pursuant to paragraph 2.3 of Schedule 8.5 ( <i>Exit Management</i> ) for managing the Parties' respective obligations;
"Exit Plan"	means the plan produced and updated by the Supplier during the Term in accordance with paragraph 4 of Schedule 8.5 ( <i>Exit Management</i> );
"Expedited Dispute Timetable"	means the reduced timetable for the resolution of Disputes set out in paragraph 3 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
"Expert"	in relation to a Dispute, a person appointed in accordance with paragraph 6.2 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> ) to act as an expert in relation to that Dispute.
"Expert Determination"	determination by an Expert in accordance with paragraph 6 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
"Extended Term"	means the Initial Term as extended by the First Extension Period;
"Extension Period"	means the First Extension Period and/or the Second Extension Period;
"Financial Distress Event"	means the occurrence of one or more of the events listed in Clause 9.10 ( <i>Financial Reporting and Assurance</i> );
"Fasttrack Change"	means any Contract Change which the Parties agree to expedite in accordance with paragraph 7 of Schedule 8.2 ( <i>Change Control Procedure</i> );
"Financial Transparency Objectives"	has the meaning given in Paragraph 2 of Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
"First Extension Period"	means a period of twenty-four (24) months from the end of the Initial Term;
"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 any relevant Central Government Body in relation to such Act;
"Force Majeure Event"	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding

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any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Subcontractor's supply chain;

**"Force Majeure Notice"**

means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

**"Former Supplier"**

means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any Sub-contractor of any such Sub-contractor)

**"GDPR"**

means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

**General AntiAbuse Rule"**

means:-

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

**"General Change in Law"**

means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

**"Good Industry Practice"**

means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

**"Government Commercial Operating Standards" ("GCOS")**

means the Government Functional Standard - GovS 008: Commercial, as may be amended from time to time. The purpose of these standards is to set expectations and drive consistency in the planning, management and execution of commercial activities, ensuring contracts and relationships with suppliers realise value for money and result in delivery of high-quality public services. Further information is available at:

<https://www.gov.uk/government/publications/commercial-operating-standards-for-government>.

**"Group Structure Information and Resolution Commentary"**

means the information relating to the Supplier Group to be provided by the Supplier in accordance with paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (*Service Continuity Plan*);

**"Halifax Abuse Principle"**

means the principle explained in the CJEU Case C-255/02 Halifax and others;

**"Health and Safety Policy"**

means the health and safety policy of the Authority, Service Recipients and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

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"Help Desk"	means the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
"HMRC"	means HM Revenue & Customs;
"Impact Assessment"	means an assessment of a Change Request in accordance with paragraph 4 of Schedule 8.2 ( <i>Change Control Procedure</i> );
"Impact Assessment Estimate"	has the meaning given in paragraph 3.3 of Schedule 8.2 ( <i>Change Control Procedure</i> );
"Implementation Plan"	means the Outline Implementation Plan or (if and when approved by the Authority pursuant to paragraph 3 of Schedule 6.1 ( <i>Implementation Plan</i> )) the Detailed Implementation Plan as updated in accordance with paragraph 4 of Schedule 6.1 ( <i>Implementation Plan</i> ) from time to time;
"Implementation Services"	means the implementation services specified in the Services Description to ensure the Operational Services are ready to be provided with effect from the Operational Service Commencement Date;
"Implementation Services Commencement Date"	means the date on which the Supplier is to commence provision of the Implementation Services, being the date specified in the Implementation Plan;
"Indemnified Person"	means the Authority, each Service Recipient and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs where permitted to do so in accordance with this Agreement;
"Indemnifier"	has the meaning given in paragraph 1.1 of Schedule 8.7 ( <i>Conduct of Claim</i> )
"Indexation" and "Index"	means the adjustment of an amount or sum in accordance with paragraph 10 of Part C of Schedule 7.1 ( <i>Charges and Invoicing</i> );
"Information"	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CDROM, magnetic and digital form);
"Information Commissioner"	means the UK Information Commissioner (including any successor or replacement);
"Information Management System"	means the Core Information Management System and the Wider Information Management System;
"Initial Term"	means the period of forty eight (48) months from and including the Implementation Services Commencement Date;
"Insolvency Continuity Plan"	as the meaning given in paragraph 1.2.1(d) of Schedule 8.6 ( <i>Service Continuity Plan</i> )
"Insolvency Event"	means with respect to any person, means:-  (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:-

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- (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:-
  - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
  - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
  - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
  - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

<b>"Intellectual Property Rights" or "IPRs"</b>	means:- <ul style="list-style-type: none"> <li>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, knowhow, trade secrets and other rights in Confidential Information;</li> <li>(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</li> <li>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"IPRs Claim"</b>	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs in respect of: <ul style="list-style-type: none"> <li>(a) rights granted to the Indemnified Persons under this Agreement;</li> <li>(b) the Supplier's performance of the Services; and/or</li> <li>(c) the use by the Authority and Service Recipients of the Services;</li> </ul>
<b>"IT"</b>	means information and communications technology;
<b>"IT Environment"</b>	means the Authority System and the Supplier System;
<b>"Joint Implementation Board"</b>	means the body described in paragraph 3 of Schedule 8.1 ( <i>Governance</i> );
<b>"IT Health Check"</b>	has the meaning given paragraph 7.1.1 of Schedule 2.4 ( <i>Security Management</i> );
<b>"Key Performance Indicator"</b>	means the key performance indicators set out in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>"KPI Failure"</b>	means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
<b>"KPI Service Threshold"</b>	has the meaning set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>"Law"</b>	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>"Licensed Software"</b>	means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software and Third Party Software;

<b>"List of Controlled Documents"</b>	means the list at Appendix 3 (Initial List of Controlled Documents) of Schedule 8.2 ( <i>Change Control Procedure</i> ) as amended from time to time in accordance with paragraph 9 of that Schedule;
<b>"Logged Issue"</b>	means a problem or requirement notified to the Help Desk and logged on the Help Desk system with a reference number
<b>"Losses" or "Loss"</b>	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
<b>"Malicious Software"</b>	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;
<b>"Man Day"</b>	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day
<b>"Man Hours"</b>	means the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's or relevant Sub-contractor's offices, or to and from the Sites) but excluding lunch breaks.
<b>"Management Information"</b>	means the management information specified in Schedule 2.2 ( <i>Performance Levels</i> ) Schedule 7.1 ( <i>Charges and Invoicing</i> ) and Schedule 8.1 ( <i>Governance</i> ) to be provided by the Supplier to the Authority;
<b>"Material KPI Failure"</b>	means:- <ul style="list-style-type: none"> <li>(a) a Serious KPI Failure;</li> <li>(b) a failure by the Supplier to meet a KPI Service Threshold;</li> </ul>
<b>"Measurement Period"</b>	means in relation to a Key Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually);
<b>"Milestone"</b>	means an event or task described in the Implementation Plan or, with respect to an Additional Milestone, as agreed between the Parties through the Change Control Procedure which, if applicable, shall be completed by the relevant Milestone Date;
<b>"Mediation Notice"</b>	has the meaning given in paragraph 4.2 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Mediator"</b>	the independent third party appointed in accordance with paragraph 5.2 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> ) to mediate a Dispute.
<b>"Milestone Achievement Certificate"</b>	means the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Appendix 1 of Schedule 6.2 ( <i>Milestone Achievement Procedure</i> );
<b>"Milestone Achievement Procedure"</b>	means the process for determining whether or a not a Milestone is Achieved as described in Schedule 6.2 ( <i>Milestone Achievement Procedure</i> );
<b>"Milestone Date"</b>	means the target date set out against the relevant Milestone in the Implementation Plan or (with respect to an Additional Milestone) as agreed



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between the Parties under the Change Control Procedure by which the Milestone must be Achieved;

<b>"Milestone Payment"</b>	means a payment identified in Schedule 7.1 ( <i>Charges and Invoicing</i> ) (or, with respect to an Additional Milestone, as agreed between the Parties under the Change Control Procedure) to be made following the issue of a Milestone Achievement Certificate;
<b>"Minor KPI Failure"</b>	means shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>"month"</b>	means a calendar month and <b>"monthly"</b> shall be interpreted accordingly;
<b>"Multi-Party Dispute"</b>	a Dispute which involves the Parties and one or more Related Third Parties.
<b>"Multi-Party Dispute Resolution Procedure"</b>	has the meaning given in paragraph 9.1 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Multi-Party Dispute Representatives"</b>	has the meaning given in paragraph 9.6 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Multi-Party Dispute Resolution Board"</b>	has the meaning given in paragraph 9.6 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Multi-Party Procedure Initiation Notice"</b>	has the meaning given in paragraph 9.2 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Net Book Value"</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
<b>"New Releases"</b>	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>"Non-Available"</b>	means in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available
<b>"Non-Chargeable Change"</b>	has the meaning given to it in paragraph 2.3.2 of Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>"Non-Exclusive Assets"</b>	those Assets (if any) which are used by the Supplier or a subcontractor in connection with the provision of the Services but which are also used by the Supplier or subcontractor for other purposes of material value;
<b>"Non-trivial Customer Base"</b>	means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
<b>"Notifiable Default"</b>	shall have the meaning given in Clause 26.1 ( <i>Rectification Plan Process</i> );
<b>"Occasion of Tax Non-Compliance"</b>	means:-  (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:-

- (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
- (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

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

**"Operating Environment"** means the environment in which the Services will be used by the Authority and the Service Recipients including the Authority System and the Sites;

**"Operational Change"** means any change in the Supplier's operational procedures which in all respects, when implemented:-

- (a) will not affect the Charges and will not result in any other costs to the Authority;
- (b) will not require a change to this Agreement;
- (c) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; and
- (d) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure or the services or infrastructure provided by an Other Supplier;

**"Operational Service Commencement Date"** means in relation to an Operational Service the date identified in the Implementation Plan upon which the Operational Services are to commence;

**"Operational Services"** means the operational services described as such in the Services Description;

**"Optional Services"** means the provision of the Optional Services listed in Appendix 2 of Schedule 7.1 (*Charges and Invoicing*).

**"Ordinary Exit"** Means any termination of the whole or part of this Agreement which occurs pursuant to Clause 33 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to six (6) months; or

as a result of the expiry of the Initial Term or any Extension Period;

**"Other Supplier"** means any supplier to the Authority, the Service Recipients and/or the Department of Business, Energy and Industrial Strategy or its successor body (other than the Supplier), including any supplier relevant to the delivery

of Project Victory, which is notified to the Supplier by the Authority from time to time;

<b>"Outline Implementation Plan"</b>	means the outline plan set out at Appendix 1 of Schedule 6.1 ( <i>Implementation Plan</i> );
<b>"Overhead"</b>	means those amounts which are intended to recover a proportion of the Supplier's or the subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within paragraph (a) of the definition of <b>"Costs"</b> or the day cost set out in Table 11 of Appendix 3 of Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>"Parent Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Partial Termination"</b>	means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 29.2.3 ( <i>Termination by the Authority</i> ) or otherwise by mutual agreement by the Parties.
<b>"Parties" and "Party"</b>	have the meanings respectively given on page 1 of this Agreement
<b>"Performance Monitoring Report"</b>	has the meaning given in paragraph 1.1.1 of Part 2 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>"Performance Review Meeting"</b>	means the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in paragraph 1.3 of Part 2 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>"Permitted Maintenance"</b>	shall have the meaning in paragraph 4 of part 1 of Schedule 2.2 ( <i>Performance Levels</i> ).
<b>"Personal Data"</b>	has the meaning given in the Data Protection Legislation and for the purposes of this Agreement includes special categories of Personal Data as set out in Article 9 of the GDPR and personal data relating to criminal convictions and offences as described in Article 10 of the GDPR;
<b>"Personal Data Breach"</b>	has the meaning given in the Data Protection Legislation;
<b>"Personal Data Processing Statement"</b>	sets out: <ul style="list-style-type: none"> <li>(i) the types of Personal Data which the Supplier and/or its Subcontractors are Processing on behalf of the Authority;</li> <li>(ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Subcontractors are Processing on behalf of the Authority; the nature and purpose of such Processing;</li> <li>(iii) the locations at which the Supplier and/or its Subcontractors Process Authority Data; and,</li> <li>(iv) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect the Authority Data against a Security Breach including a Personal Data Breach, which shall be prepared by the Supplier in accordance with paragraph</li> </ul>

5.4 of Schedule 2.4 (*Security Management*) and included in the Risk Management Documentation;

**"Process", "Processed" or "Processing"**

have the meaning given in the Data Protection Legislation;

**"Process Authority Data"**

means any operation which is performed on Authority Data, whether or not by automated means, including adapting, altering, collecting, combining, copying, destroying, erasing, handling, organising, publishing retrieving, storing, structuring, transmitting or otherwise using Authority Data;

**"Processor"**

has the meaning given in the Data Protection Legislation;

**"Product Roadmap"**

means the roadmap for the Licensed Software that the Supplier (or its licensors) maintains from time to time that shall include:-

- (a) details of the new or revised functionality of the Licensed Software taking into account the version of the Licensed Software that is available in the market from time to time;
- (b) mapping against relevant industry standards;
- (c) the key characteristics and benefits of the Licensed Software;
- (d) the Licensed Software's ability to interoperate with the Authority's interfacing systems including the software of the Other Suppliers; and
- (e) any modifications that might be required to existing Vehicle design and installations;

**"Prohibited Act"**

means:-

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or a Service Recipient a financial or other advantage to:-
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:-
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority or a Service Recipient; or

- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

<b>"Project"</b>	means a one-time activity to be supplied by the Supplier that has been commissioned under the Change Control Procedure;
<b>"Project Charges"</b>	means the Charges for delivery of a Project as set out in the relevant Change Authorisation Notice based on the charging principles for Projects set out in Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>"Project Managers"</b>	means the individuals appointed as such by the Authority and the Supplier in accordance with paragraph 1 of Schedule 8.1 ( <i>Governance</i> );
<b>"Project Victory"</b>	means the programme of procurements that the Authority initiated pursuant to the OJEU notice referred to in Recital (B);
<b>"Public Sector Dependent Supplier"</b>	means a supplier where that Supplier, or that Supplier's Group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
<b>"Public Sector and CNI Contract Information"</b>	means the information requirements set out in accordance with Appendix 2 of Part 2 of Schedule 8.6 ( <i>Service Continuity Plan</i> );
<b>"Quarter"</b>	means the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
<b>"Receiving Party"</b>	means the Party which receives a proposed Contract Change;
<b>"Recipient"</b>	has the meaning given in Clause 20.1 ( <i>Confidentiality</i> );
<b>"Records"</b>	has the meaning given in Schedule 8.4 ( <i>Reports and Records Provisions</i> );
<b>"Rectification Plan"</b>	means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
<b>"Rectification Plan Failure"</b>	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 26.4 (<i>Submission of the draft Rectification Plan</i>) or 26.8 (<i>Agreement of the Rectification Plan</i>);</p> <p>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 26.7 (<i>Agreement of the Rectification Plan</i>);</p> <p>(c) the Supplier failing to rectify a material Default within the later of:-</p> <p>(i) thirty (30) Working Days of a notification made pursuant to Clause 26.2 (<i>Notification</i>); and</p> <p>(ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;</p> <p>(d) a Material KPI Failure reoccurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the three (3) Measurement Periods subsequent to</p>

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the Measurement Period in which the initial Material KPI Failure occurred;

- (e) the Supplier not Achieving the Milestone for Operational Services Commencement Date within thirty (30) days of the date on which it is planned to be Achieved (as specified in the Implementation Plan); and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

<b>"Rectification Plan Process"</b>	means the process set out in Clauses 26.4 ( <i>Submission of the draft Rectification Plan</i> ) to 26.9 ( <i>Agreement of the Rectification Plan</i> );
<b>"Register"</b>	Means the register and configuration database referred to in paragraphs 2.1.1 and 2.1.2 of Schedule 8.5 ( <i>Exit Management</i> );
<b>"Regulator Correspondence"</b>	means any correspondence from the Information Commissioner or other applicable regulator in relation to the Processing of Personal Data;
<b>"Reimbursable Expenses"</b>	<p>means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the provision of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:-</p> <ul style="list-style-type: none"><li>a. travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing and</li><li>b. subsistence expenses incurred by Supplier Personnel whilst providing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed.</li></ul>
<b>"Related Third Party"</b>	<p>means a party to:-</p> <ul style="list-style-type: none"><li>a. another contract with the Authority or the Supplier which is relevant to this Agreement or</li><li>b. a Subcontract.</li></ul>
<b>"Related Service Provider"</b>	means any person who provides services to the Authority or any Service Recipient in relation to this Agreement from time to time;
<b>"Relevant Authority"</b>	means the Authority or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
<b>"Relevant IPRs"</b>	means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the Licensed Software;
<b>"Relevant Requirements"</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

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<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>"Relevant Transfer"</b>	means a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place
<b>"Relief Notice"</b>	has the meaning given in Clause 27.2 ( <i>Authority Cause</i> );
<b>"Repeat KPI Failure"</b>	has the meaning given in paragraph 3.1 of Part 1 of Schedule 2 ( <i>Performance Levels</i> );
<b>"Replacement Services"</b>	means any services which are the same as or substantially similar to any of the Services and which the Authority or a Service Recipient receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority or a Service Recipient internally and/or by any third party;
<b>"Replacement Supplier"</b>	means any third party service provider of Replacement Services appointed by the Authority or a Service Recipient from time to time (or where the Authority or Service Recipient is providing replacement Services for its own account, the Authority or Service Recipient);
<b>"Replacement sub-contractor"</b>	means a Sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-contractor of any such Sub-contractor)
<b>"Request for Estimate"</b>	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment that would be payable if the Authority exercised its right under Clause 31.1.1 ( <i>Termination by the Authority</i> ) to terminate this Agreement for convenience on a specified Termination Date;
<b>"Request For Information"</b>	means a Request for Information under the FOIA or the EIRs;
<b>"Required Changes Register"</b>	is a register which forms part of the Risk Management Documentation which records each of the changes that the Supplier has agreed with the Authority shall be made to the Core Information System and/or the Risk Management Documentation as a consequence of the occurrence of any of the events set out in paragraph 5.13.1 to 5.13.8 of Schedule 2.4 ( <i>Security Management</i> ) together with the date on which each such change shall be implemented and the date on which each such change was implemented;
<b>"Review Report"</b>	has the meaning given in paragraphs 6.2.1 to 6.2.3 of Schedule 8.6 ( <i>Service Continuity Plan</i> );
<b>"Risk Management Approval Statement"</b>	is a notice issued by the Authority which sets out the information risks associated with using the Core Information Management System and confirms that the Authority is satisfied that the identified risks have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Authority;
<b>"Risk Management Documentation"</b>	has the meaning given in paragraph 5.3 of Schedule 2.4 ( <i>Security Management</i> );
<b>"Risk Management Reject Notice"</b>	as the meaning given in paragraph 5.7.2 of Schedule 2.4 ( <i>Security Management</i> );

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"Satisfaction Survey"	has the meaning given in paragraph 7.1 of Part 2 of Appendix 1 of Schedule 2.2. ( <i>Performance Levels</i> );
"Second Extension Period"	means a period of twenty-four (24) months from the end of the First Extension Period;
"Security Test"	has the meaning given in paragraph 7.1 of Schedule 2.4 ( <i>Security Management</i> );
"Sensitive Claim"	has the meaning given in paragraph 2.1 of Schedule 8.7 ( <i>Conduct of Claim</i> );
"Serious KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 ( <i>Performance Levels</i> );
"Service Availability"	has the meaning given in paragraph 2 of Part 2 of Appendix 1 of Schedule 2.2 ( <i>Performance Levels</i> );
"Service Charges"	means the periodic payments made in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ) in respect of the supply of the Operational Services;
"Service Continuity Plan"	means, as at the Effective Date, the plan attached at Appendix 1 of Schedule 8.6 ( <i>Service Continuity Plan</i> ) and as updated pursuant to paragraph 6 of that Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;
"Service Continuity Services"	means the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 ( <i>Service Continuity Plan</i> );
"Service Credits"	means credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with paragraph 8 of Part C of Schedule 7.1 ( <i>Charges and Invoicing</i> );
"Service Downtime"	means any period of time during which any of the Services are not Available
"Service Incident"	means a reported occurrence of a failure to deliver any part of the Services in accordance with the Authority Requirements or the Key Performance Indicators
"Service Period"	means a calendar month, save that:-  (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and  (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term
"Service Points"	means in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the Service Points column of Table in Appendix 1 of Schedule 2.2 ( <i>Performance Levels</i> );
"Service Recipient"	means each of:  (a) Sellafield Limited a company registered in England and Wales (company number 01002607) with its registered office at Hinton House Birchwood Park Avenue, Risley, Warrington, Cheshire, United Kingdom, WA3 6GR;



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- (b) Low Level Waste Repository Ltd a company registered in England and Wales (company number 05608448) with its registered office at Old Shore Road, Drigg, Holmrook, Cumbria, CA19 1XH;
- (c) Magnox Limited a company registered in England and Wales (company number 02264251) with its registered office at Oldbury Technical Centre, Oldbury Naite, Thornbury, South Gloucestershire, England, BS35 1RQ;
- (d) Dounreay Site Restoration Limited a company registered in Scotland (company number SC307493) with its registered office at Building D2003, Dounreay, Thurso, Caithness, KW14 7TZ;
- (e) International Nuclear Services Limited a company registered in England and Wales (company number 01144352) with its registered office at Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
- (f) Direct Rail Services Limited a company registered in England and Wales (company number 03020822) with its registered office at Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
- (g) Radioactive Waste Management Limited a company registered in England and Wales (company number 08920190) with its registered office at Building 329 West Thomson Avenue, Harwell Oxford, Didcot, England, OX11 0GD;
- (h) Rutherford Indemnity Limited a company registered in Guernsey and regulated by the Guernsey Financial Services Commission;
- (i) Nuclear Decommissioning Authority with its office at Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
- (j) National Nuclear Laboratory Limited a company registered in England and Wales (company number 03857752) with its registered office at Chadwick House Warrington Road, Birchwood Park, Warrington, WA3 6AE;
- (k) the Office of the Nuclear Regulator;
- (l) any other UK public sector contracting authority that delivers services to the UK in respect of the nuclear decommissioning programme; and
- (m) any person that is owned or controlled by the Department for Business, Energy and Industrial Strategy, the Authority or any of the entities listed at paragraphs (a) to (l) above,

and any successor bodies thereto that perform any of the functions previously performed by any of the foregoing bodies;

**"Service Transfer"**

means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

**"Service Transfer Date"**

means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

**"Services"**

means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (*Services Description*);

**"Services Description"**

means the services description set out in Schedule 2.1 (*Services Description*);

<b>"Sites"</b>	<p>means any premises (including the Authority Premises, the Supplier's premises or third party premises):-</p> <p>(a) from, to or at which:-</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:-</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
<b>"SME" or "Small and Medium-sized Enterprises"</b>	<p>means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;</p>
<b>"Software"</b>	<p>means Supplier Software and Third Party Software;</p>
<b>"Specific Change in Law"</b>	<p>means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;</p>
<b>"Staffing Information"</b>	<p>means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <p>a. their ages, dates of commencement of employment or engagement, gender and place of work</p> <p>b. details of whether they are employed, self employed contractors or consultants, agency workers or otherwise</p> <p>c. the identity of the employer or relevant contracting Party</p> <p>d. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments</p> <p>e. their wages, salaries, bonuses and profit sharing arrangements as applicable</p> <p>f. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them</p> <p>g. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims)</p> <p>h. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence</p> <p>i. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or</p>

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relevant standard contracts if applied generally in respect of such employees) and

- j. any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

<b>"Standard Contractual Clauses"</b>	means the Standard Contractual Clauses ( <i>Controller to Processor</i> ) issued by the European Commission as updated and/or amended from time to time or such equivalent document published by the UK Government following the Exit Day;
<b>"Standards"</b>	the standards, policies and/or procedures identified in Schedule 2.3 ( <i>Standards</i> );
<b>"Standards Hub"</b>	means the Government's open and transparent standards adoption process as documented at <a href="http://standards.data.gov.uk/">http://standards.data.gov.uk/</a>
<b>"Statement of Information Risk Appetite"</b>	has the meaning given paragraph 4.1 of Schedule 2.4 ( <i>Security Management</i> );
<b>"Strategic Supplier"</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> ;
<b>"Subcontract"</b>	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
<b>"Subcontractor"</b>	<p>means any third party (including a sub-processor of Authority Personal Data) with whom:-</p> <ul style="list-style-type: none"><li>(a) the Supplier enters into a Subcontract; or</li><li>(b) a third party under (a) above enters into a Sub-contract,</li></ul> <p>or the servants or agents of that third party;</p>
<b>"Subsidiary Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Successor Body"</b>	has the meaning given in Clause 32.4 ( <i>Assignment and Novation</i> );
<b>"Suggested Challenge"</b>	means a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub
<b>"Supplier Change Manager"</b>	means the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative;
<b>"Supplier COTS IPRs"</b>	means any embodiments of Supplier IPRs that are COTS;
<b>"Supplier COTS Software"</b>	means Supplier Software (including open source software) that is COTS;
<b>"Supplier Forum"</b>	means the body described in paragraph 5 of Schedule 8.1 ( <i>Governance</i> );
<b>"Supplier Group"</b>	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;

<b>"Supplier IPRs"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) Intellectual Property Rights owned by the Supplier (or an Affiliate of the Supplier) before or after the Effective Date, for example those subsisting in the Supplier's or Affiliate's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's or Affiliate's know-how or generic business methodologies; and/or</li> <li>(b) Intellectual Property Rights created by the Supplier (or an Affiliate of the Supplier) independently of this Agreement,</li> </ul> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier (or Affiliate of the Supplier) subsisting in the Supplier Software;</p>
<b>"Supplier NonCOTS IPRs"</b>	means any embodiments of Supplier IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS IPRs;
<b>"Supplier NonCOTS Software"</b>	means Supplier Software that is not Supplier COTS Software;
<b>"Supplier NonPerformance"</b>	has the meaning given in Clause 27.1 ( <i>Authority Cause</i> );
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier pursuant to Clause 10.2 ( <i>Representatives</i> ), as notified to the Authority from time to time;
<b>"Supplier Request"</b>	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.
<b>"Supplier Software"</b>	means software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 ( <i>Software</i> );
<b>"Supplier Solution"</b>	means the Supplier's solution for the Services set out in Schedule 4.1 ( <i>Supplier Solution</i> ) including any Appendices of that Schedule;
<b>"Supplier System"</b>	means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
<b>"Supplier Termination Event"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) the Supplier's level of performance constituting a Critical Performance Failure;</li> <li>(b) the Supplier committing a material Default which is irremediable;</li> <li>(c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of any of the</li> </ul>

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aggregate annual liability caps for that Contract Year as set out in Clause 24.3 (*Financial Limits*);

- (d) a Rectification Plan Failure;
- (e) where a right of termination is expressly reserved in this Agreement, including pursuant to:-
  - (i) Clause 18 (*IPRs Indemnity*);
  - (ii) Clause 35.6.2 (*Prevention of Fraud and Bribery*); and/or
  - (iii) Clause 9.12 (*Financial Reporting and Assurance*);
  - (iv) paragraph 3 of Part 2 to Schedule 8.6 (*Service Continuity Plan*);
- (f) the representation and warranty given by the Supplier pursuant to Clause 3.2.7 (*Warranties*) being materially untrue or misleading;
- (g) the Supplier committing a material Default under Clause 9.13 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 9.13 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (h) the Supplier committing a material Default under any of the following Clauses:-
  - (i) Clause 20 (*Confidentiality*); and
  - (ii) Clause 21 (*Transparency and Freedom of Information*);
  - (iii) Clause 22 (*Protection of Personal Data*); and
  - (iv) Clause 31 (*Compliance*); and/or

in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or

in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
- (i) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (j) a change of Control of the Supplier or a Guarantor unless:-
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
- (k) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts

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Regulations 2015 from the procurement procedure leading to the award of this Agreement;

- (l) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
- (m) Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority)

<b>"Supplier's Final Supplier Personnel List"</b>	means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date
<b>"Supplier's Provisional Supplier Personnel List"</b>	means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier
<b>"Supplier's Proposals"</b>	has the meaning given to it in paragraph 6.2.3 of Schedule 8.6 ( <i>Service Continuity Plan</i> );
<b>"Supply Chain Transparency Report"</b>	means the report provided by the Supplier to the Authority in the form set out in Appendix 4 of Schedule 8.4 ( <i>Reports and Records Provisions</i> );
<b>"Supporting Documentation"</b>	means sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts.
<b>"System Response Time"</b>	has the meaning given in paragraph 3.1 of Part 2 of Appendix of Schedule 2.2. ( <i>Performance Levels</i> );
<b>"Target Performance Level"</b>	means the minimum level of performance for a Key Performance Indicator which is required by the Authority, as set out against the relevant Key Performance Indicator in the tables in Appendix 1 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>"Tender Documents"</b>	means the advertisement issued by the Authority seeking expressions of interest, the selection questionnaire, Invitation to Submit Initial Tender;
<b>"Term"</b>	means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
<b>"Termination Assistance Notice"</b>	has the meaning given in paragraph 4.1 of Schedule 8.5 ( <i>Exit Management</i> );
<b>"Termination Assistance Period"</b>	means, in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to paragraph 4.2 of Schedule 8.5 ( <i>Exit Management</i> );
<b>"Termination Date"</b>	means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;

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"Termination Estimate"	has the meaning given in paragraph 10.2 of Schedule 7.2 ( <i>Payments on Termination</i> );
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
"Termination Payment"	has the meaning given in paragraph 2 of Schedule 7.2 ( <i>Payments on Termination</i> );
"Termination Services"	means the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Appendix 1 of Schedule 8.5 ( <i>Exit Management</i> ), and any other services required pursuant to the Termination Assistance Notice;
"Tests" and "Testing"	means any tests required to be carried out under this Agreement, as further described in the Implementation Plan or a Change Authorisation Note (as applicable); and " <b>Tested</b> " shall be construed accordingly;
"Third Party Beneficiary"	has the meaning given in Clause 39.1 ( <i>Third Party Rights</i> );
"Third Party Contract"	means a contract with a third party entered into by the Supplier exclusively for the purpose of providing the Services, as listed in Schedule 4.2 ( <i>Third Party Contracts</i> );
"Third Party COTS IPRs"	means Third Party IPRs that is COTS;
"Third Party COTS Software"	means Third Party Software (including open source software) that is COTS;
"Third Party IPRs"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party NonCOTS IPRs"	means Third Party IPRs that are not Third Party COTS IPRs;
"Third Party NonCOTS Software"	means Third Party Software that is not Third Party COTS Software;
"Third Party Provisions"	has the meaning given in Clause 39.1 ( <i>Third Party Rights</i> );
"Third Party Software"	means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 ( <i>Software</i> );
"Time Service Charges"	means the charges relating to the Rate Card of Appendix 3 of Schedule 7.1 ( <i>Charges and Invoicing</i> );
"Transferable Assets"	those of the Exclusive Assets which are capable of legal transfer to the Authority;
"Transferable Contracts"	means the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority, any Service Recipient or any Replacement Supplier to provide the Services or the Replacement Services, including in relation to licences all relevant Documentation;

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<b>"Transferring Assets"</b>	has the meaning given in paragraph 5.2,1 of Schedule 8.5 ( <i>Exit Management</i> );
<b>"Transferring Contracts"</b>	has the meaning given in paragraph 5.2.1(c) of Schedule 8.5 ( <i>Exit Management</i> );
<b>"Transferring Supplier Employees"</b>	means those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date;
<b>"UK"</b>	means the United Kingdom;
<b>"UK Public Sector Business"</b>	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
<b>"Unplanned System Downtime"</b>	means any period of time during which any of the Services are not available, excluding Permitted Maintenance time;
<b>"Unrecovered Costs"</b>	means the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ) as such Costs and Charges are forecast in the Financial Model;
<b>"Unrecovered Payment"</b>	means an amount equal to the lower of:- <ul style="list-style-type: none"><li>a. the sum of the Unrecovered Costs and</li><li>b. the amount specified in paragraph 4.3 of Schedule 7.2 (<i>Payments on Termination</i>);</li></ul>
<b>"Updates"</b>	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
<b>"Upgrades"</b>	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
<b>"VAT"</b>	means value added tax as provided for in the Value Added Tax Act 1994; and
<b>"Vulnerability Correction Plan"</b>	has the meaning given in paragraph 7.3.3(a) of Schedule 2.4 ( <i>Security Management</i> );
<b>"Wider Information Management System"</b>	means those information assets, ICT systems and/or Sites which will be used by the Supplier and/or its Subcontractors to Process Authority Data which have not been determined by the Authority to form part of the Core Information Management System together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources;
<b>"Working Day"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.





**SCHEDULE 2.1**

**SERVICES DESCRIPTION**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

## I. DEFINITIONS

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

## 1. INTRODUCTION

- 1.1 As the Authority and its organisations, the Service Recipients, have come together over recent years, our individual organisations have each brought their own local commercial processes and systems. The Authority is bringing these into alignment with the Government Commercial Operating Standards (GCOS). "Project Victory" is been tasked with delivery of a suite of commercial systems which:

- 1.1.1 Work well for all Service Recipients, and align with GCOS requirements;
- 1.1.2 Facilitate more strategic procurement activities such as commercial and financial modelling, effective category management, market and supplier analysis and management, and, optionally, supplier relationship management;
- 1.1.3 Shift the NDA and its subsidiaries from manual data collection, manipulation and reporting to automated solutions;
- 1.1.4 Improve data integrity, and compliance with data standards;
- 1.1.5 Improve the ability to share and obtain information from/with other systems, particularly Enterprise Resource Planning (ERP) systems;
- 1.1.6 Enhance the ability to share information across the Service Recipients, and also into and out of central government;
- 1.1.7 Dovetail with central government systems, such as the Contracts and Spend Insight Engine (CaSIE), without the need for 'double keying' or manual intervention to upload data; and
- 1.1.8 Enable baselining and measurement of government targets for supply chain spend, such as through small and medium-sized enterprises (SMEs).

## 2. OPERATIONAL SERVICES

- 2.1 In addition to Schedule 4.1 (*Supplier Solution*), the Supplier shall provide the following Operational Services:-
- 2.1.1 The provision and maintenance of operational software and interfaces which meet the functional requirements for the System set out Volume 2 of the ISIT; the Interfaces Overview Document; and the Data Dictionary as included in Volume 3 of the ISIT, as detailed in Appendix 1;
  - 2.1.2 The provision of supported data migration to import legacy supplier and contract data to the system, in accordance with Schedule 6.1 (*Implementation Plan*);
  - 2.1.3 The provision of training and training materials in accordance with Schedule 6.1 (*Implementation Plan*);
  - 2.1.4 The provision of a help desk service between the hours of 0800 and 1700 in accordance with the performance levels set out in Schedule 2.2 (*Performance Levels*);
  - 2.1.5 The provision of an escalation route for unresolved issues (e.g. a Supplier Account Manager), or for issues raised out-of-hours in a critical situation;
  - 2.1.6 The provision of performance reporting in accordance with the requirements of Schedule 2.2 (*Performance Levels*); and

- 2.1.7 The provision of software patches and developments in accordance with an agreed schedule to ensure the software is secure and stable, and to provide enhancements to functionality as agreed with the Supplier Group, as defined in Schedule 8.1 (*Governance*).

### 3. SUPPLIER SYSTEM DESCRIPTION

- 3.1 In addition to Schedule 4.1 (*Supplier Solution*), the Supplier System and interfaces shall cover the following scope in accordance with the Government Commercial Operating Standards as may be updated from time to time:-

- 3.1.1 “Planning”, including Commercial Pipeline and Project Management to:-

deliver a record and forward view of commercial projects across the NDA and its subsidiaries, meeting the requirement [defined](#) by HM Government;

deliver project gate and other approval workflows;

record and monitor the delivery of project benefits, cashable and non-cashable;

- 3.1.2 “Source”, including Publication, Selection and Evaluation, Contract Award and Implementation to:-

support publication of contract notices;

support end-to-end procurement in accordance with the Public Contracts Regulations 2015, any subsequent UK procurement legislation thereafter;

enable end-to-end procurements below the regulatory thresholds, and procurement off Frameworks; and

support contract registry and document storage.

- 3.1.3 “Manage”, including Contract Management and Supplier Performance Management to:-

facilitate effective contract management; and

record and report on contract and supplier performance.

- 3.1.4 “Systems and Information”, including Source to Contract master data management to:-

provide a controlled supplier master database with standardised data across the system landscape, including functionality for suppliers to update their own data with workflow approval; and

provide effective user management and controls, and security controls

- 3.1.5 “Reports and Interfaces” to:-

provide a suite of internal reports for the above areas of functionality, and dashboards to bring together data across the system to support performance monitoring; and

provide and maintain the interfaces as defined in Volume 3 of the ISIT between the Supplier System and systems provided by Third Party Suppliers as determined by the Authority, as set out in Appendix 1.

### 4. OPTIONAL SERVICES

- 4.1 In addition to Schedule 4.1 (*Supplier Solution*), the Supplier System and interfaces shall cover the following scope:

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- 4.1.1 “Manage”, including Supplier Relationship Management to:-  
enable effective Supplier Relationship Management and collaborative activities across the Service Recipients and their suppliers.
- 4.1.2 any Additional Development or Additional Services as may be requested by the Authority from time-to-time in accordance with this Agreement.

## APPENDIX 1

### DETAILED REQUIREMENTS

The requirements from the following documents are set out below:

- NDA-PV-LOT-A-ISIT-Vol 2 - Technical-Commercial-Legal-Financial-Requirements Bidder Questionnaire - v3.0 for issue with ISIT 25-01-2021, and
- NDA-PV-LOT-A-ISIT-Vol 3 - Other Information - v2.0 for issue with ISIT

The data dictionary is embedded below.



Project\_Victory\_Data\_  
Dictionary v2.0 11-01

## APPENDIX 1

## DETAILED REQUIREMENTS

## VOLUME 2: TECHNICAL AND USER EXPERIENCE REQUIREMENTS

Ref:	General System Requirements/User experience/Master Data Management
<b>A1</b>	<b>The core system configuration meets the criteria below:</b>
A1.01	The system is accessible from all common web browsers on Windows/Mac/Linux platforms via a secure web address, with no requirement for software/code/ActiveX controls to be downloaded to a user or supplier computer. The system should be able to operate effectively with a standard broadband connection (8MB down, 2MB up). The system will be built on an industry-recognised robust coding platform
A1.02	<p>Data is maintained at high quality and data entry is eased by:</p> <ul style="list-style-type: none"> <li>- Standard formatting across the system, including UK style for dates, currency etc.</li> <li>- Use of drop-down/check-boxes/radio buttons to limit free text entry wherever possible</li> <li>- Fields can be marked as mandatory or optional for entry by system administrators</li> <li>- Free-text fields have character limits stated</li> <li>- System names use standard UK procurement terms as defined in the Public Contracts Regulations 2015</li> </ul>
A1.03	The system supports Azure single-sign-on across all modules/functional areas. There are several separate instances of Azure across the group. The system also supports two-factor security for logins which are not from trusted networks.
A1.04	Users can carry out self-service password reset via their official email address. Lost usernames would require helpdesk support and confirmation (see A2.01 below).
A1.05	User password structure follows UK National Cyber Security Centre guidance.
A1.06	The system must be accessible for users who use assistive technology to overcome an impairment and must conform to the Public Sector Bodies Accessibility Regulations 2018.

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A1.07	The system can store documents and media in a range of common office formats. The scale of the NDA group means that the amount of storage available will be significant – estimated minimum 25TB.
A1.08	The system supports flexibility by offering a large number of customisable fields for use across the system.
<b>A2</b>	<b>The system is supported, maintained and developed, to meet the criteria below:</b>
A2.01	<p>Helpdesk support is to be provided by the Contractor with cover from 0800 – 1700 Monday to Friday as a minimum. This will offer two key services:</p> <ul style="list-style-type: none"> <li>- Second-line support for issues escalated by super-users or local administrators across the NDA group. Super-users may identify issues as urgent for faster response.</li> <li>- First-line support to suppliers having difficulty with using the system (referring issues related to individual projects to super-users or local administrators).</li> </ul> <p>Helpdesk will provide access via email or system messaging as a preference, or by phone. An escalation route is provided to enable urgent out-of-hours matters to be resolved.</p> <p>In the event of system downtime/service degradation, email notification to designated internal system administrators will be administered and distributed by the Contractor as per the agreed Service Level Agreements and Service Credits policy.</p> <p>The helpdesk will seek customer satisfaction feedback for reporting on performance.</p>
A2.02	A staging environment will be provided to support testing of system changes/upgrades, identical in functionality to the live system and with representative test data, at no extra cost.
A2.03	The Contractor maintains and communicates to the system owners a forward view of system developments and releases, with developments to existing functionality being free of charge and clarity provided about the cost of further enhancements/upgrades.
A2.04	Maintenance patches and upgrades must come with full user documentation.
A2.05	The system provides users with both general and context-sensitive help information to support both initial familiarisation and to lead users through a process journey. Video material, or similar, is available to guide users, including suppliers.



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A2.06	<p>The Contractor provides training on a 'train the trainer' basis to super-users on the key NDA sites in London, Oxfordshire, Warrington, Cumbria and Bristol. The number of super-users is indicated in this document. Training will be required during development/rollout of the system for this group of users and priced for further use to support new super-users.</p> <p>The Contractor should provide for remote delivery of this training as an alternative if travel is not possible or convenient.</p>
A2.07	<p>The Contractor will provide a solution for the periodic back-up of data to prevent data loss. This will include the freezing and back-up of data prior to the implementation any of updates/improvements/changes identified as Major jointly by NDA and the Contractor.</p>

<b>A3</b>	<b>The system is locally administered, to meet the criteria below:</b>
A3.01	<p>Designated internal system administrators have access to assign new users to the system, and create supplier accounts if necessary (for example, in the case of Direct Award contracts).</p>
A3.02	<p>User access to the system is controlled via a role-based or user group profile mechanism so that the access of all users in a group can be maintained and modified as requirements develop. Access can be controlled by module, category, NDA subsidiary, department, programme or project.</p> <p>Designated internal system administrators can assign users to roles/profiles and customise individual access. It is possible to limit user access by department/subsidiary company and to individual projects and groups of projects.</p>
A3.03	<p>The internal system administrators can create, modify and delete project, tender and contract templates and process workflows as required.</p>
A3.04	<p>The internal system administrators can audit every transaction conducted by any user (accepting that tender bid data can only be accessible after the tender has closed).</p>
A3.05	<p>The system supports bulk export and import of data independently of the Contractor, administered through a visually accessible and clean-designed interface located in the e-Sourcing system.</p>
A3.06	<p>The system supports the simplified version of the United Nations Standard Products and Service Codes (UNSPSC) used in the NDA group, Standard Industrial Classification codes (SIC), Common Procurement Vocabulary codes (CPV), and the <a href="#">UK Government's Common Areas of Spend: Procurement taxonomy</a> (CAS) to categorise procurement expenditure.</p> <p>Projects of all types, as well as contracts, should be able to be assigned to the appropriate code values for analysis. The system should be capable of multiple codes being assigned.</p>

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A3.07	The system supports suppliers to manage their own master data profile through designated users who have been assigned the appropriate access (for example contact details, company details, small and medium-sized enterprise (SME) status). This profile is used across the system wherever supplier names are entered, to ensure consistency.
A3.08	The system enables a lead user within the supplier organisation to configure their internal team roles, for example, which users will be able to submit tender responses or contract performance data.
A3.09	<p>The system re-uses the core master data responses entered by a supplier whenever that supplier responds to a competition, effectively building one master supplier database across the end-to-end system. Data entered at a prior stage must not be overridden by data submitted later, unless otherwise specified/approved.</p> <p>The data dictionary attached sets out the core Government Commercial Operating Standards (GCOS) fields and NDA-specific fields which must be supported, alongside the much broader range of data provided by the solution as standard.</p>

<b>A4</b>	The organisation complies with the 14 <a href="#">National Cyber-Security Centre Cloud Security Principles</a> , including confirmation that staff with access to NDA data are, or will be, security-cleared.
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	<b>Planning: Procurement Pipeline Management</b>
<b>B1</b>	<b>The system supports the development and delivery of the procurement project pipeline, to meet the criteria below:</b>
B1.01	<p>The system tracks and controls commercial delivery from pre-procurement through to contract exit, providing a forward view of all future projects as well as current projects. The minimum requirement is to be able to record the details of a go/no-go decision at each gate, and the achievement of at the least the following key milestones:</p> <ol style="list-style-type: none"> <li>1) Sourcing Strategy Approval</li> <li>2) Selection Questionnaire (if needed)</li> <li>3) Tender Launched</li> <li>4) Tender Submission deadline</li> <li>5) Award Approval</li> <li>6) Contract Award</li> </ol>

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	7) Go Live
B1.02	Configurable email alerts are automatically generated to users based on events configured within the project workflows and at specified stages. The content of such emails can be configured by designated internal system administrators to meet organisational requirements.
B1.03	System emails are sent from a standard pre-notified email address, so that it can be 'white-listed' by the IT team(s).
B1.04	As well as publishing projects to the system's own portal, the system is also capable of publishing flagged projects to national systems (e.g. Sell2Wales, Public Contracts Scotland) and to Find-a-Tender/Contracts Finder (or equivalent) to notify the market of future opportunities, awards and contract extensions, in line with present and future UK regulatory requirements
B1.05	The data captured and processed conforms to the Government <a href="#">minimum viable product</a> for procurement/commercial project pipelines, and further fields as set out in the data dictionary attached.
B1.06	The planning/pipeline/project module shares data with the sourcing and contract management modules, and other systems as specified in the data dictionary attached.
B1.07	The system supports 1,000+ procurement/commercial projects per annum.
B1.08	Procurement projects can be grouped by subsidiary organisation, department, project owner and market category. They must also be able to be grouped into programmes.
B1.09	The system supports flexibility in the design of governance workflows for procurement projects, and maintains an audit trail of approvals in line with the Government five case model for business cases and the associated business case stages <sup>1</sup> .
B1.10	The system records comments and endorsements by approvers at each project stage, as well as committee and board decisions, sanctions and comments. The system has the facility to define an approval committee as a single approver under the control of a nominated person.
B1.11	The system deploys standard procurement project templates in line with the defined governance workflows, so that new projects are automatically set up with the correct workflow for their situation.
B1.12	Dates associated with projects and contracts (e.g. milestone dates, contract start/end etc) should be stored as 'planned' (the baselined expected date at plan sign-off), 'forecast' (the latest expected date as the project progresses), and 'actual' (the actual date the milestone happened).

<sup>1</sup> For an introductory overview, see Chapter 2 of the [Guide to Developing the Project Business Case](#)

<b>B2</b>	<b>The system supports the recording and tracking of project benefits, to meet the criteria below:</b>
B2.01	<p>The system supports the recording of project benefits. Benefits should be categorised as follows:</p> <ul style="list-style-type: none"> <li>- Cashable savings (savings delivering a real reduction that releases budget for other purposes)</li> <li>- Non-Cashable savings (for example, cost avoidance, efficiency gains etc)</li> <li>- Quantitative benefits (for example, an equivalent value for Social Value benefits)</li> <li>- Qualitative benefits (free-text items describing soft benefits)</li> </ul> <p>Benefits are assigned at the procurement project level and must be able to be split as required, should more than one organisation or department be receiving benefits. All financial and quantitative benefits should aggregate to category, programme, project owner, department and organisation group level as required for reporting purposes.</p> <p>Benefits are assigned to be delivered in each financial year of the contract.</p> <p>As the project progresses, the value of benefits will be monitored at the point of Estimate (when the project is added to the pipeline), Forecast (when the project goes to market, and/or the outline business case is signed off), Award (when the contract is awarded and/or the full business case is signed off), and Actual (reviewing delivery for each year). The system must therefore support the tracking of forecast benefits across the duration of delivery of the benefit. Reporting is required to show the 'story' of the delivery of the project benefits from initial estimate to review of actual delivery.</p>
B2.02	The system supports the analysis of benefits delivery by subsidiary organisation, department, programme and market category.
B2.03	The system supports status tracking of procurement projects, with the project lead being able to report Red/Amber/Green/Blue (Blue for 'complete') overall for the procurement project.
B2.04	The system prompts creation of a new, future procurement project on the pipeline for contracts which are ultimately to be re-procured, automatically calculating the start-date.
B2.05	The system supports the updating and monitoring of delivery of signed-off project benefits throughout contract life.

	Source: Publication, Selection and Evaluation, Contract Award and Implementation
<b>C1</b>	<b>The system supports a range of sourcing options, to meet the criteria below:</b>
C1.01	<p>The system operates in full compliance with UK procurement legislation, supporting all available procurement routes to market under UK procurement legislation, e.g.:</p> <ul style="list-style-type: none"> <li>Open and Restricted Procedures</li> <li>Competitive Dialogue</li> <li>Competitive Procedure with Negotiation</li> <li>Innovation Partnerships</li> <li>Dynamic Purchasing Systems</li> <li>E-auctions</li> <li>Frameworks (both creation and call-offs from existing frameworks on the system)</li> <li>Direct Award (under regulation 32)</li> </ul>
C1.02	The system enables users to select an existing framework and then see the list of the suppliers on the framework prior to carrying out a mini-competition.
C1.03	[Requirement removed in ISIT Volume 2 version 3 issued 25/01/2021]
C1.04	The system supports bids from consortia, and the management of contracts with consortia, to include the linked details of the participating suppliers with the corresponding element of the NDA Group master supplier database.
C1.05	The system enables mini-competitions to be run against frameworks set up on the system, or Crown Commercial Service or other Public Sector Buying Consortia agreements (potentially with connected linkage to their sourcing systems).
C1.06	As well as full tendering, the system supports eRFx activities with standardised templates and workflows.
C1.07	The system supports the establishment and operation of Dynamic Purchasing Systems.

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<b>C2</b>	<b>The system supports the tendering process, to meet the criteria below:</b>
C2.01	The system supports secure, auditable messaging between suppliers and buyers during tenders and between contract managers, buyers and suppliers for the life of the contract (including during the standstill period). Such messages are retained in line with the organisations' records management policies even if the user is removed from the system. Replacement staff can be given access to existing messages for a project/contract.
C2.02	The system enables the buyer to control and co-ordinate requests for clarification, with a full audit trail of all clarification messages and the results of the clarification, including any changes made to the supplier's tender as a result of such clarification. An extractable report should be available to show all clarifications and responses for a given project.
C2.03	The system supports the Standard Selection Questionnaire for public sector procurement, with the option to add specific questions as permitted, and the down-selection of bidders following an initial stage.
C2.04	The system supports online question banks, with different types of question (e.g. yes/no, options, scales, text) to build Invitations to Tender and e-auctions for a range of categories, with weighting and scoring per question.
C2.05	The system supports upload of prepared ITT documentation by buyers and also hosts a range of templates for developing documents.
C2.06	The system offers a 'supplier portal' where prospective bidders will be able to see information about projects and make submissions at each stage.
C2.07	The system enables bidders to download the required documents for a tender without the need for additional software to be installed on their computer, with an audit trail maintained.
C2.08	The system enables bidders to respond to tender/sourcing questions online.
C2.09	The system enables bidders to securely upload tender response documents as defined by the buyer when the tender is set up.
C2.10	The system blocks access to either online or uploaded tender responses until a specified date, and prevent entry of responses after the tender deadline.
C2.11	The system validates tender response inputs and prevents submission until all mandatory fields have been completed.

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C2.12	The system sends an automatic acknowledgement of successful submission of a tender response to the bidder. The acknowledgement text can be customised according to NDA Group, directorate, or team requirements with the change implemented independent of the Contractor by a designated set of users.
C2.13	The system supports updates and re-submission of tender responses by bidders ahead of the submission deadline.
C2.14	The system supports suppliers to bid in an open tendering environment with no limit to responses for final automatic evaluation, in particular for complex contracts where Intellectual Property (IP) is involved.
C2.15	The system maintains a supplier's answers to the standard Selection Questionnaire for re-use on later bids, to save re-keying.

<b>C3</b>	<b>The system supports the evaluation of tenders, to meet the criteria below:</b>
C3.01	The system provides access to tender responses for each project only to controlled groups of users for evaluation, e.g. some users might only evaluate technical questions or commercial questions
C3.02	The system facilitates the online evaluation and moderation of tender responses
C3.03	The system facilitates the entry of scoring decisions made by individual users in an auditable manner
C3.04	The system enables access for evaluators and prevents access to other evaluation responses for the project. It also offers the ability to assign specific questions to specific evaluators and supports private messaging to each evaluator.
C3.05	[Requirement removed in ISIT Volume 2 version 3 issued 25/01/2021]
C3.06	The system maintains an audit trail of all evaluation activity by each evaluator which can be extracted in an accessible format upon request.
C3.07	The system prompts evaluators by email to complete their tasks and notifies the buyer when all responses have been completed. The project owner can view progress of completion.
C3.08	The system will support use of standardised and consistent scoring methodologies for tenders, and all calculations will be based on whichever is chosen. The system will allow evaluation based on individual or panel scoring, and on consensus or average.

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C3.09	The system records the decisions and commentary of the evaluation panel, including ranking bidders with comments, and the upload of meeting minutes.
C3.10	The system supports recording of details of agreed award criteria and their weightings for a specific tender.
C3.11	The system supports creation of detailed supplier debrief reports, including for procurements with multiple Lots - informing a supplier of their (consensus) scores and comments for each question, their overall marks for each Lot, and a comparison of their marks with the mark(s) received by the successful supplier(s).
C3.12	The system provides automatic generation of intention to award/unsuccessful letters/emails to bidders, compliant with regulation and legislation, and including each bidder's debrief report
C3.13	For a competition with a number of lots, the system allows each lot to be awarded to different suppliers or consortia.

<b>C4</b>	<b>The system supports contract preparation and award, to meet the criteria below:</b>
C4.01	The system supports a library of pre-approved contracts/clauses which can be added by designated users, enabling a range of contract types to be configured, including framework agreements.
C4.02	The system enables the buyer to load or generate a contract using standard clauses which may then be amended to suit the buyer's particular requirements.
C4.03	[Requirement removed in ISIT Volume 2 version 3 issued 25/01/2021]
C4.04	The system supports online approval (or declining) of contracts by successful suppliers (via email requests).
C4.05	The system supports formal electronic signatures for contracts, including routing the contract via a number of approvers prior to final signature.
C4.06	The system will also support the upload of scanned manually-signed contracts.
C4.07	The system supports the electronic sealing of contracts as deeds where required, enabling the maintenance of a seal register for each subsidiary organisation in the NDA group.
C4.08	The system records if a contract is to be re-procured when it ends, either with the same scope or a different scope, or if it is a one-off procurement.



	<b>Manage: Contract Management, Supplier Performance Management</b>
<b>D1</b>	<b>The system supports effective contract management, to meet the criteria below:</b>
D1.01	The system passes all common data from the tender and award stages to the contract management module of the system, including required documentation, to avoid re-keying.
D1.02	The system supports the uploading of files throughout the contract life, including emails and internal notes.
D1.03	The system enables messaging with the supplier and maintains an audit trail of them.
D1.04	The system supports entry of time-stamped notes related to a contract.
D1.05	The system hosts a contract calendar, with entry of key milestones for contract delivery, with ability to track when they are achieved, including contract review meetings and annual review of insurances, standards data etc.
D1.06	The system provides a configurable reminder facility to prompt internal and supplier users of imminent and late milestones.
D1.07	The system supports recording of timestamped requests for contract variations, tracking who made them, and the uploading of revised documents associated with the request.
D1.08	The system supports multiple versions of contract documents and indicates which are current, with audit trail.
D1.09	The system supports creation and use of a pre-populated task library, grouped by tier/ category, as templates for a new contract task list. i.e. individual tasks / clusters, which can be imported into individual contract as needed e.g. termination/ dispute resolution / exit planning task clusters.
D1.10	The system supports the classification of contracts according to the GCOS Bronze, Silver and Gold level, and a separate flag identifying contracts critical for business continuity. This includes the classification of prospective contracts at the planning/pipeline stage.
D1.11	The system supports configurable workflows aligned to different contract types.
D1.12	The system supports contract risk registers, with templates of common risks per contract type and option to add individual risks, calculation of impact (both cost and time / resource) and likelihood of risk, generating a Red Amber Green Blue (RAGB) score and alert for high risk items. This score must be able to be reported on in the Analytics and Reporting suite (Lot E) with relevant contractual information provided.

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D1.13	The system hosts a contract issues log i.e. reactive and not scheduled tasks, ability to assign issues and send as link to responsible party (can be NDA Group member, Customer or Supplier), and can include free text comments or attachments. Also requires the option to schedule reminders and monitor task completion.
D1.14	The system will host and facilitate the management of contracts outside of sourcing activity, for example grants, leases, rental agreements, non-disclosure agreements.

<b>D2</b>	<b>The system supports reporting on contracts, to meet the criteria below:</b>
D2.01	The system supports the configuration of a range of types of performance indicator for contracts, for example, simple RAG or other 'option' statuses or numeric measures which can be aggregated and analysed. Performance indicators should be able to be configured for a range of cycle timeframes (weekly/ monthly/ quarterly etc.).
D2.02	The system supports the entry of performance data against indicators by both the customer and the supplier, with automatic email prompting for updates in line with agreed cycles.
D2.03	Suppliers are able to highlight in the system which parts of a contract they believe should be redacted, in the event that the contract is later awarded and then published on Contract Finder (CF), with internal review and agreement. The system will allow for an auditable trail of NDA response to these supplier proposals.
D2.04	The system offers an on-demand, system-generated contract management plan and summary report for each contract.
D2.05	Contract records can be flagged to be excluded from reporting to the central government Contract and Spend Insight Engine (CaSIE), or outside of individual organisations, with a comment box for the rationale.

<b>D3</b>	<b>The system meets the criteria below:</b>
D3.01	The system supports the recording of sub-contractors for a contract, with linkage to their profile in the NDA master supplier database.
D3.02	The system supports (and prompts) closing a project/contract once it is completely fulfilled (including any defect period) as per the completion of indicator fields on that project/contract's record (e.g. reaching of a specified data, or recording of 100% completion of project). Data for closed projects/contracts must be held as per NDA Group data requirements.

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D3.03	At all stages the system will facilitate the recording of lessons learned in a project/contract specific log with an accessible audit trail and edit and view permissions assigned to designated users. The system will also hold a centralised and consolidated lessons learned log, where entries from project/contract specific logs can be transferred and otherwise new entries also submitted. On both logs, lessons learned entries can be categorised with identifiable tags.
D3.04	The system supports the novation of a contract in the event of a supplier being bought out or similar
D3.05	The system provides alerts to contract managers when scheduled payment assessments / programme submissions are due, where required by the contract.

	<b>Supplier Relationship Management*</b>
<b>E1</b>	<b>The system supports the delivery of supplier relationship management (SRM) activities, to meet the criteria below:</b>
E1.01	The system supports portfolio analysis and configuration of a segmented list of suppliers across NDA group businesses to assess the appropriate relationship management approach for SRM. The segmentation levels would be manually defined and assigned.
E1.02	The system facilitates 360° feedback from contract managers and suppliers, and analysis of the data, including a supplier's view of themselves and their view of us as a client; and the associated contract managers' views of themselves as clients, and their views of the supplier.
E1.03	The system holds records of jointly agreed goals and objectives, facilitates the reporting of strategic supplier meetings and progress against milestones and action plans, and prompts upcoming action required to the parties involved.
E1.04	The system brings together all the information relevant to a supplier relationship in one place from across the suite.
E1.05	The system supports the development, evaluation and monitoring of innovation work with suppliers to meet developing business needs.

\*Supplier Relationship Management is an Optional Service.

	Reporting
<b>F1</b>	<b>The system provides for flexible reporting and analysis, to meet the criteria below:</b>
F1.01	The system offers a suite of pre-developed reports and dashboards to support the delivery and monitoring of project progress, contract and SRM performance across the lifecycle, as well as management reports to identify incomplete data or missed milestones/deadlines etc.
F1.02	Access to reports for end-users is configurable so that users will only access the reports and underlying project or contract data to meet their business needs.
F1.03	Designated users have access to create or modify reports across the system relying on existing data and fields, in response to developing business needs, without the need to use development time with the Contractor. Reports must be able to be automatically published to groups of users as required.
F1.04	Users can download raw data and reports in a range of formats, including but not limited to .csv and .xls/.xlsx formats, for use elsewhere including uploading to local websites.
F1.05	Designated users have access to upload bulk data to the system in .csv and .xls/.xlsx formats (for example to update field values following a data cleanse or a change in regulations), and uploads must be without additional charges by the Contractor.

	Interfaces
<b>G1</b>	<b>The system's interfacing capabilities meet the criteria below:</b>
G1.01	The system supports connection with an analytics/data visualisation platform where data from the system can be joined with data from other systems in the landscape, including spend against contract data from ERP systems, to build performance dashboards and provide aggregated reports to cross-government systems (see Data Dictionary attached in Volume 3)
G1.02	The planning/pipeline/project module shares data with the sourcing and contract management modules, and other systems as specified in the interfaces overview document and data dictionary attached in Volume 3
G1.03	<p>The system shares data with the Lot C Contract Management System for End-to-End Project Management Contracts (see interfaces overview document and Data Dictionary in Volume 3):</p> <ul style="list-style-type: none"> <li>· Creating new records when an end-to-end project management contract is let, sharing details of the procurement project, supplier and contract documents</li> </ul>

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	<ul style="list-style-type: none"> <li>· Maintaining up to date data about contract status during change management processes back into the master system e.g. 'header data' such as contract end date, contract manager's name etc.</li> <li>· Maintaining up to date data about contract performance and risk status</li> </ul>
G1.04	The system feeds supplier and contract information to the Lot D Supply Chain Risk Management System (see interfaces overview document and Data Dictionary attached in Volume 3)

	Implementation
<b>H1</b>	<b>The approach to implementation meets the criteria below:</b>
H1.01	The supplier has a controlled and organised approach to project initiation, delivery and exit with clearly defined roles and responsibilities, and project and resource plans that are actively monitored and managed to ensure adherence to time, cost and quality. Where a bidder is a consortium, roles and responsibilities between consortium members are effectively managed to provide a seamless service to NDA.
H1.02	The supplier has a robust approach to risk management, which ensure risks (threats and opportunities) are identified, assessed and controlled during the project. The supplier collaborates with NDA to mitigate threats and realise opportunities.
H1.03	The supplier has a clear approach to quality management that ensures successful implementation of the proposed solution and ongoing service delivery. There is a focus on continuous improvement throughout the life of the contract post implementation.
H1.04	<p>The supplier is flexible and agile. The supplier provides the Project Victory team and the Implementation Leads in each of the businesses with configuration options to meet individual needs and ways of working across multiple sites and stakeholders, recognising that sometimes one size doesn't fit all.</p> <p>The Project Victory team and the Implementation Leads will endeavour to align processes and project templates wherever possible – we envisage three buckets – those we will align for system 'go live' (e.g. templates, where possible), those that we will align over time (e.g. terms and conditions / clause libraries), and those where there is no appetite to align (e.g. governance tasks / sign off points will remain business specific).</p>
H1.05	User Acceptance Testing (UAT) is properly resourced by the supplier. Authority users, who are undertaking the testing, are appropriately briefed in advance and supported through the process. Feedback from users is co-ordinated and reflected in the configuration of the system.
H1.06	The Project Victory team in NDA and the Implementation Leads in each of the businesses are supported to deliver change. For example, the supplier provides input to communications to end users; the supplier delivers training and user guides to end users.
H1.07	End users are supported directly during the early months of using your proposed solution, recognising that it will take time for some users to build confidence in how the system works and how to use it even after training has been delivered (there will be a period of 'bedding in').
H1.08	The supplier has a robust approach to developing and maintaining relationships with suppliers of third party systems. The approach ensures on-time delivery of reliable application programming interfaces, with clear roles and responsibilities for their ongoing maintenance and testing.

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TX.01	<p>Data is maintained at high quality and data entry is eased by</p> <ul style="list-style-type: none"> <li>- Standard formatting across the system, including UK style for dates, currency etc.</li> <li>- Use of drop-down/checked boxes/radio buttons to limit free text entry wherever possible</li> <li>- Fields can be marked as mandatory or optional for entry by system administrators</li> <li>- Free-text fields have character limits stated</li> <li>- System names use standard UK procurement terms as defined in the Public Contracts Regulations 2015</li> </ul>
TX.02	<p>The system provides users with both general and context-sensitive help information to support both initial familiarisation and to lead users through a process journey. Video material, or similar, is available to guide users, including suppliers.</p>
TX.03	<p>The system is straightforward to access and navigate, with a clean, clear, modern, and user-intuitive design throughout</p>
TA.01	<p>The system tracks and controls commercial delivery from pre-procurement through to contract exit, providing a forward view of all future projects as well as current projects. The minimum requirement is to be able to record the details of a go/no-go decision at each gate, and the achievement of at the least the following key milestones:</p> <ol style="list-style-type: none"> <li>1) Sourcing Strategy Approval</li> <li>2) Selection Questionnaire (if needed)</li> <li>3) Tender Launched</li> <li>4) Tender Submission deadline</li> <li>5) Award Approval</li> <li>6) Contract Award</li> <li>7) Go Live</li> </ol>
TA.02	<p>Procurement projects can be grouped by subsidiary organisation, department, project owner and market category (see requirement F1.01). They must also be able to be grouped into programmes.</p>
TA.03	<p>The system records comments and endorsements by approvers at each project stage, as well as committee and board decisions, sanctions and comments. The system has the facility to define an approval committee as a single approver under the control of a nominated person.</p>
TA.04	<p>The system supports the recording of project benefits. Benefits should be categorised as follows:</p> <ul style="list-style-type: none"> <li>- Cashable savings (savings delivering a real reduction that releases budget for other purposes)</li> <li>- Non-Cashable savings (for example, cost avoidance, efficiency gains etc)</li> <li>- Quantitative benefits (for example, an equivalent value for CSR benefits)</li> <li>- Qualitative benefits (free-text items describing soft benefits)</li> </ul> <p>Benefits are assigned at the procurement project level and must be able to be split as required, should more than one organisation or department be receiving benefits. All financial and quantitative benefits should aggregate to category, programme, project owner, department and organisation group level as required for reporting purposes.</p> <p>Benefits have the status of forecast, signed off, or delivered as the project progresses.</p>
TA.05	<p>The system supports the analysis of benefits delivery by subsidiary organisation, department, programme and market category</p>

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TA.06	The system supports status tracking of projects, with the project lead being able to report Red/Amber/Green/Blue (Blue for complete) overall for the procurement project as a whole.
TA.07	The system supports more detailed tracking of procurement project R/A/G/B status for three high-level factors – Schedule, Budget, Benefits.

TB.01	As well as full tendering, the system supports eRFx activities with standardised templates and workflows.
TB.02	The system enables users to select an existing framework and then see the list of the suppliers on the framework prior to carrying out a mini-competition.
TB.03	The system enables mini-competitions to be run against frameworks set up on the system, or Crown Commercial Service or other Public Sector Buying Consortia agreements (potentially with connected linkage to their sourcing systems).
TB.04	The system supports formal electronic signatures for contracts.

TC.01	The system is capable of publishing flagged projects to national systems (eg Sell2Wales, Public Contracts Scotland), and to Find-a-Tender/Contracts Finder (or equivalent) to notify the market of future opportunities, awards and contract extensions, in line with present and future UK regulatory requirements.
TC.02	The system maintains a supplier's answers to the standard Selection Questionnaire for re-use on later bids, to save re-keying.
TC.03	The system supports online question banks, with different types of question (e.g. yes/no, options, scales, text) to build Invitations to Tender and e-auctions for a range of categories, with weighting and scoring per question.
TC.04	The system offers a 'supplier portal' where prospective bidders will be able to see information about projects and make submissions at each stage.
TC.05	The system supports suppliers to manage their own master data profile through designated users who have been assigned the appropriate access (for example contact details, company details, SME status).
TC.06	The system will support use of standardised and consistent scoring methodologies for tenders, and all calculations will be based on whichever is chosen. The system will allow evaluation based on individual or panel scoring, and on consensus or average.
TC.07	The system supports upload of prepared ITT documentation by buyers and hosts a range of templates for developing documents.
TC.08	The system enables bidders to respond to tender/sourcing questions online.

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TC.09	The system supports secure, auditable messaging between suppliers and buyers during tenders and between contract managers, buyers and suppliers for the life of the contract (including during the standstill period). Such messages are retained in line with the organisations' records management policies even if the user is removed from the system. Replacement staff can be given access to existing messages for a project/contract.
TC.10	The system enables the buyer to control and co-ordinate requests for clarification, with a full audit trail of all clarification messages and the results of the clarification, including any changes made to the supplier's tender as a result of such clarification. An extractable report should be available to show all clarifications and responses for a given project.
TC.11	The system facilitates the online evaluation and moderation of tender responses.
TC.12	The system enables access for evaluators and prevents access to other evaluation responses for the project. It also offers the ability to assign specific questions to specific evaluators and supports private messaging to each evaluator.
TC.13	The system supports creation of detailed supplier debrief reports, including for procurements with multiple Lots - informing a supplier of their (consensus) scores and comments for each question, their overall marks for each Lot, and a comparison of their marks with the mark(s) received by the successful supplier(s).
TC.14	The system supports the electronic sealing of contracts as deeds where required, enabling the maintenance of a seal register for each subsidiary organisation in the NDA group.

TD.01	The system hosts a contract calendar, with entry of key milestones for contract delivery, with ability to track when they are achieved, including contract review meetings.
TD.02	The system supports the configuration of a range of types of performance indicator (PI) for contracts, for example, simple RAG or other 'option' statuses or numeric measures which can be aggregated and analysed. PIs should be able to be configured for a range of cycle timeframes (weekly/ monthly/ quarterly etc.).
TD.03	The system supports the entry of performance data against indicators by both the customer and the supplier, with automatic email prompting for updates in line with agreed cycles.
TD.04	The system enables capturing of data by contract for key Government agenda items, e.g. size of business/SME status, value of sub-contracts with SMEs, prompt payment, steel, timber, apprenticeships. This could include the manual keying of information by users, the implementation of a feed of data from elsewhere in the NDA Group or UK government, self-reporting by suppliers direct to the system, a combination of approaches, or



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	other approaches. Given the fluid nature of political priorities, the system must be agile in facilitating the addition, removal, or enhancement of such agenda items.
TD.05	The system supports the updating and monitoring of delivery of signed-off project benefits throughout contract life.
TD.06	The system offers a suite of pre-developed reports and dashboards to support the delivery and monitoring of project progress, contract and SRM performance across the lifecycle, as well as management reports to identify incomplete data or missed milestones/deadlines etc.
TE.01	Create a new NDA site user, maintain user detail (name change), lock / unlock a user, and delete / archive a user.
TE.02	Create a new supplier record and associated user(s), maintain detail and lock / unlock the supplier record.
TE.03	Create projects and tenders on behalf of another user (or create then allocate ownership to another user), re-allocate ownership to another user part way through a process, modify project attributes, modify tender attributes and delete or archive a project and a tender
TE.04	Demonstrate the facility for System administrators to process stalled workflows in the event that a user in the process is not available, or has been locked or deleted, or has moved from one part of the organisation to another.
TE.05	Allocate and remove roles from a user both newly created and already allocated to an in-flight project and tender.
TE.06	Demonstrate the audit trail on an in-flight and completed project
TE.07	Demonstrate the functionality to bulk export data and bulk import data, using contract data as an example

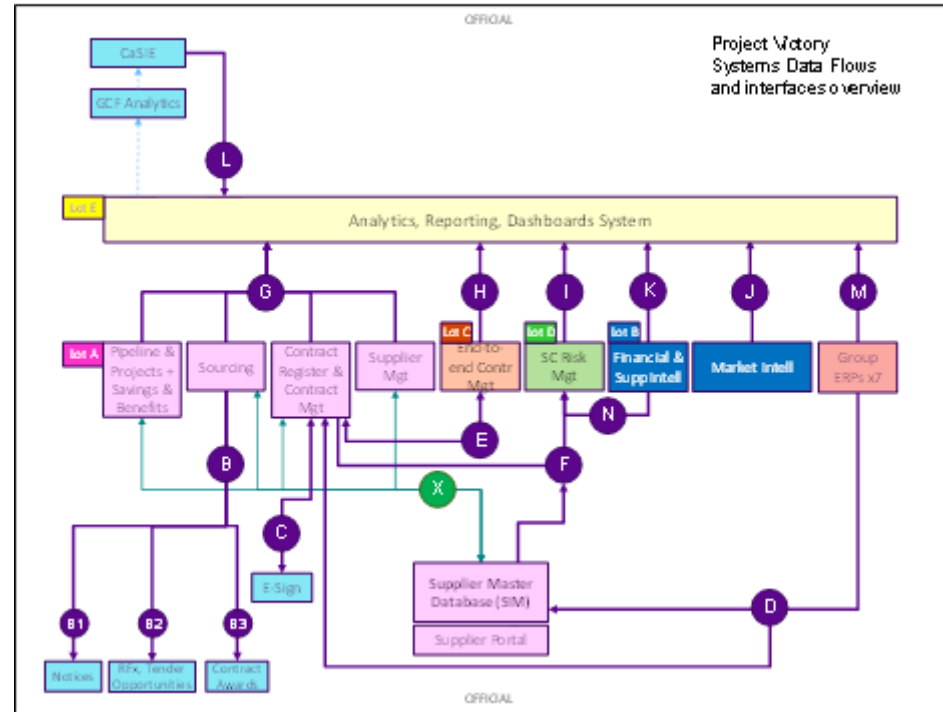
**VOLUME 3: INTERFACES OVERVIEW AND DATA DICTIONARY****Project Victory and Integration**

Supporting the One NDA vision, Project Victory is updating and enhancing all the systems used for Commercial activities across the group. Whilst the group has had a common e-tendering solution for some time, the ambition for the project is much greater – to provide a fully integrated suite of commercial systems which will support greater efficiency and provide a 'one version of the truth' view of projects, contracts, spend and performance. Historically, the group member organisations operated more independently and so there is no single, common IT infrastructure across the group and therefore a cloud-based approach to commercial systems is being taken.

There are two key aspects to the integration requirements for the project:

1. To provide a common analytics/dashboarding platform where data from the various systems can be joined with data from local ERP systems to provide a comprehensive view of our commercial activity and performance
2. To support this with a series of interfaces to ensure that master data around suppliers and contracts is maintained in sync to a consistent standard across the commercial systems.

The 'Data Dictionary' document sets out an overview of the interfaces needed to meet the requirements in the specifications for the other Lots, the core set of fields they will need to carry, and the suggested frequency of updates. It also states which provider is responsible for leading on each interface, which is generally the provider receiving data. This document expands on that, providing more information about each interface.



### The interfaces:

#### Interface X – Supplier Master Data Provisioning

The system we are procuring as Lot A forms the heart of the suite, offering pipeline and procurement project management along with benefit tracking, sourcing, contract management, supplier relationship management.

The diagram in the data dictionary shows an interface X, which shares data in a common Supplier Information Management system with each of the functional 'modules' above. It is expected that, in reality, the Lot A system will support this internally without the need for an interface as such but it is listed so that the identified fields (as a minimum) are available across the Lot A system.

By adopting the Data Standards for supplier data being set out by the Government Commercial Function, we are setting out standard definitions for the supplier master data fields.

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Prospective suppliers will enter their own master data prior to a bid for a tender, and the inclusion of a company or charity registration number and a DUNS number will be mandatory except for sole traders. This will deliver master data which can be used across the rest of the Project Victory landscape. There is a requirement to also be able to store local contact names and addresses for bidders and contracts.

Lot B of the procurement includes the requirement for a Financial Intelligence service, which will be used to verify this data, and ensure that the standardised data from Companies House (and equivalents) are available in the overall analytics (Lot E).

### Interface A – Financial Intelligence Lookup

Interface A is no longer required.

### Interface B – Tender opportunity and contract publication

This interface supports the required links with government/national systems to comply with regulatory requirements to advertise notices, contract opportunities and awards.

It is expected that the Lot A system will already support such links to Tenders Electronic Daily, Contracts Finder, Sell2Wales, Public Contracts Scotland and their updated successors which will follow EU Exit without further configuration. This interface is owned by the Lot A provider.

### Interface C – E-signature

This interface provides for contracts to be signed digitally (via email links), and again it is expected that this will be provided by the Lot A system as standard (probably via a third-party supplier). The NDA group has made some use of e-signatures in NDA member organisations, but not universally across the group, so this is one of the aims of the project where internal governance will allow it (for example, in the lower value contracts). The NDA group uses sealing for higher-value contracts on occasion, and proposals for electronic versions of this would be welcome for future use.

The system must allow for multiple signatures to a document, and workflow to support those being added in a sequence defined by the user. It must also allow for the document to be commented on, amended and re-sent as it is finalised. This interface is owned by the Lot A provider.

### Interface D – ERP Lookup

Interface D provides for unique Identifier data about suppliers and contracts held within NDA group member ERP systems to be stored within the Lot A master supplier information management database. This provides consistent key fields stored in one place for use in the other systems.

There are a number of ERP systems in use currently across the NDA group:

Organisation	System	Organisation	System
DRS/INS	Sage X3	NDA	Sage 1000
DSRL	Unit 4 Business World	RWM	Sage 1000
LLWR	Unit 4 Business World	Sellafield	SAP ECC6
Magnox	Unit 4 Business World and Proactis		

*Note: There is one instance of Sage with each organisation configured separately within it.*

This makes it challenging to use a fully automated interface to synchronise (or provision) master data to the ERPs, so our requirement is for a mechanism to ensure all the identifier data is available in the Lot A Supplier Master Database, such as a lookup against a data extract from each system.

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In relation to this interface<sup>2</sup>, the ERP data extract files would consist of:

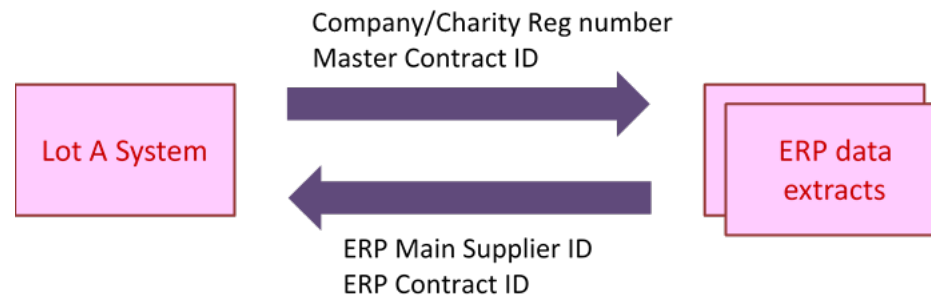
- Buying Organisation (i.e. NDA group member)
- Supplier ID (company or charity reg number)
- DUNS number
- Supplier name (for manual checking)
- Main Supplier ID (the local ERP supplier ID)
- Contract ID (the master in the Lot A system)
- ERP Contract ID (the local ERP contract ID)

The essential requirement, therefore, is that the Lot A system runs a lookup process against a file extract from each ERP system on a nightly basis to return any new local IDs used in each NDA member organisation. It then stores them on the master supplier record.

The companies house ID (or charity registration ID) is stored locally against the ERP supplier record and can therefore be used as a key field for the lookup to return the local supplier ID used in that system. Since a given supplier may be contracted by more than one of the NDA group members, it is necessary to be able to store up multiple IDs against the master record in the Lot A system. Additionally, the DUNS number is also used widely in the group, and will be a key field.

Some of the NDA group are also able to capture spend against contracts on their ERP. For example, at Magnox using U4BW, and at Sellafield Ltd, where SAP outline agreement document objects are used to represent contracts and purchase orders are raised with reference to these documents so that if there are multiple contracts with a supplier the spend can be analysed against each. These objects also carry the contract ID of the master contract on the predecessor of the Lot A system so that the data can be aligned.

In Project Victory, the requirement is for this interface to also lookup the ERP data extract files to return the contract IDs against each supplier and store those against the master contract records in the Lot A system. The process here would be that once a contract is let and the local ERP contract 'document(s)' is/are created, the master contract ID would be added to it manually as the contract is mobilised. Then the interface would search that ID and return the local contract ID.



<sup>2</sup> See also Interface M

The interface will run nightly to capture any new records or changes. This interface is owned by the Lot A provider.

#### **Interface E – End-to-End Contract Management Connector**

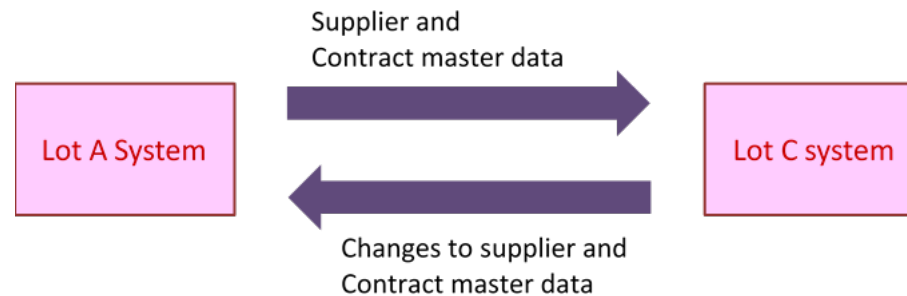
The Lot C end-to-end contract management system will hold details of all project-managed contracts (for example, NEC contracts) and provide the functionality to support contract delivery and monitoring in that specialist sector.

The initial requirement for interface E, therefore, is to populate the Lot C system with the header data for all relevant contracts marked with a suitable flag when they are let.

Any subsequent changes made to supplier or contract master data for flagged contracts is then passed over to the Lot C system.

Since the Lot C system will be used by suppliers and by NDA personnel, they are likely to enter changes to supplier master data contract header data on that system during the course of the contract. For example, the contract may overrun or be extended (or finish early), or the contact details of those involved may change.

Changes arising from the Lot C system will be passed back to the Lot A system, including high-level performance status. This interface is owned by the Lot C provider.



#### **Interface F – Supply Chain Risk Connector**

This interface ensures that the Lot D Supply Chain Risk system receives master data about all the Suppliers and Contracts in the Lot A system in a similar way to Interface E so that records for them can be created and they can be segmented and assessed. These data are not changed in the Lot D system so it is one-way. This interface is owned by the Lot D provider.

#### **Interfaces G, H, I – Analytics Connectors**

These interfaces are extractors from the Lot A, C and D systems respectively and are owned by the Lot E provider. Their purpose is to provide comprehensive datasets to the Lot E analytics system:

Lot A system: Project and Pipeline data including progress of sourcing projects, Supplier master data, Contract Master data and performance data, Supplier Relationship Management data  
Lot C system: Supplier ID, Contract progress and performance data  
Lot D system: Supplier ID, Contract data, risk/profile data, supply chain mapping data

#### **Interface J – Analytics Connector - Market Intelligence**

Lot B will provide the NDA group with a suite of market and category insight reports, which would reside on the providers' systems. The aim is to be able to add hyperlinks to these reports to the category hierarchy master data in the analytics system to enable easy reference to the reports when required. It is therefore likely this will require manual intervention centrally, rather than this being an interface as such, though we will welcome proposals on this. This interface will be owned by the NDA, with support from the providers.

#### **Interface K – Analytics Connector - Financial and Supplier Intelligence**

Lot B will also provide the NDA group with access to financial and non-financial data on suppliers, including assessment of financial health, assessment of risk of future financial difficulty, business size/SME status, compliance and associated information.

Interface K uses the DUNS number, company registration or charity registration to lookup all this information on the Lot B system and return it to the Analytics platform for presentation. The core financial data provided on this interface will be used to calculate the ratios listed in Annex A of the Lot B specification so must include all the required items for these calculations where they are available for a given organisation (apart from internal NDA data such as spend data required for certain ratios).

This interface will be owned by the Lot E provider.

#### **Interface L – HMG feed**

Interface L will be used to import data from the government's Contract and Spend Insight Engine, known as CaSIE. This will enable the NDA group to identify which government departments are using the same suppliers and opportunities for benchmarking, greater insight and collaborative projects. This interface will be owned by the NDA with support from the Lot E provider.

Note: The NDA will also require a report on the Lot E platform to bring together the data required to submit group data to the Government Commercial Function's spend analytics system which then passes it to CaSIE.

#### **Interface M – Analytics Connectors ERP**

The data available for analysis in the Lot E system is completed by a series of extracts from the NDA group's ERP systems providing spend data.

The extracts for Interface D, to bring the local ERP IDs for suppliers and contracts into the Lot A system will therefore also carry further data to meet the requirements set out in the Lot E specification for a range of reports. This will include:

Master extracts of department, cost centre and nominal data

Spend data by Supplier, Contract, Purchase Order, Invoice, Department, Project, Cost Centre, Nominal and Category/Material. In some cases, Purchase card spend data will also be needed.

These extracts will also be used to provide data to the Lot D Supply Chain Risk Management System.

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### Interface N – Financial and Supplier Intell Lot B to Lot D

The interface brings financial and supplier intelligence data from Lot B into the Lot D Supply Chain Risk Management System



**SCHEDULE 2.2**

**PERFORMANCE LEVELS**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

**I. DEFINITIONS**

- ii. In this Schedule, the definitions set out in Schedule 1 shall apply.

**PART 1**

**PERFORMANCE INDICATORS AND SERVICE CREDITS**

**1. KEY PERFORMANCE INDICATORS**

- 1.1 Appendix 1 sets out the Key Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Key Performance Indicator and shall send the Authority a report detailing the level of performance actually achieved in accordance with Part 2.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated every three months (the 'measurement period'), in accordance with paragraphs 2, 3 and 5.

**2. SERVICE POINTS**

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Appendix 1 depending on whether the KPI Failure is a Minor KPI Failure, or a Serious KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of paragraph 3.2 shall apply.

**3. REPEAT KPI FAILURES AND RELATED KPI FAILURES**

**Repeat KPI Failures**

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "**Repeat KPI Failure**".
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:-

$$SP = P \times 2$$

where:-

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Appendix 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, or a failure to meet the KPI Service Threshold.

**Worked example based on the following Service Points regime for Service Availability**

Service Availability Severity Levels		Service Points
Target Performance Level	99%	0
Minor KPI Failure	98.0% - 98.9%	1
Serious KPI Failure	96.0% - 97.9%	2
KPI Service Threshold	Below 96%	3

**Example 1**

*If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Serious KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (ie  $SP = 3 \times 2$ ). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.*

**Example 2**

*If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Serious KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (ie  $SP = 1 \times 2$ ). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.*

**Related KPI Failures**

- 3.3 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

**4. PERMITTED MAINTENANCE**

The Supplier shall agree in writing with the Authority planned Service Downtime for Permitted Maintenance in any one Service Period. This shall take place between the hours and on the day agreed unless otherwise agreed in writing with the Authority.

**5. SERVICE CREDITS**

- 5.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 5.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Part 2, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

## PART 2

### PERFORMANCE MONITORING

#### 1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within ten (10) Working Days of the end of each Service Period, the Supplier shall provide:-

- 1.1.1 a report to the Authority Representative which summarises the performance by the Supplier against each of the Key Performance Indicators as more particularly described in paragraph 1.2 and provides the underlying data that supports this (the "**Performance Monitoring Report**").

#### **Performance Monitoring Report**

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:-

#### **Information in respect of the Service Period just ended**

- 1.2.1 for each Key Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Service Periods and the underlying data that supports such performance;
- 1.2.2 a summary of all Performance Failures that occurred during the Service Period and the supporting information relating to the cause of any such Performance Failures;
- 1.2.3 the severity level of each KPI Failure which occurred during the Service Period and whether each KPI Failure which occurred during the Service Period fell below the KPI Service Threshold;
- 1.2.4 which Performance Failures remain outstanding and progress in resolving them;
- 1.2.5 for any Material KPI Failures occurring during the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- 1.2.6 the status of any outstanding Rectification Plan processes, including:-
- (a) whether or not a Rectification Plan has been agreed; and
  - (b) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
- 1.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 1.2.8 the number of Service Points awarded in respect of each KPI Failure;
- 1.2.9 the Service Points to be applied, indicating the KPI Failure(s) to which the Service Points relate;
- 1.2.10 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan and confirmation of any follow on actions or dates of re-testing to achieve compliance;
- 1.2.11 relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- 1.2.12 such other details as the Authority may reasonably require from time to time;

**Information in respect of previous Service Periods**

- 1.2.13 a rolling total of the number of Performance Failures that have occurred over the past six (6) Service Periods;
- 1.2.14 the amount of Service Credits that have been incurred by the Supplier over the past six (6) Service Periods;
- 1.2.15 the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

**Information in respect of the next Quarter**

- 1.2.16 any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter.
- 1.3 The Performance Monitoring Report shall be reviewed and its contents agreed by the Parties at the next **“Performance Review Meeting”** held in accordance with paragraph 1.4.
- 1.4 The Parties shall attend meetings on a quarterly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):-
- 1.4.1 take place within ten (10) Working Days of the Performance Monitoring Report being issued by the Supplier;
  - 1.4.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
  - 1.4.3 be attended by the Supplier Representative and the Authority Representative.
- 1.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure.

**2. PERFORMANCE RECORDS**

- 2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of twelve (12) months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

3. **PERFORMANCE VERIFICATION**

The Authority reserves the right to verify the availability of the IT Environment and/or the Services and the Supplier's performance under this Agreement against the Key Performance Indicators including by sending test transactions through the IT Environment or otherwise.

## APPENDIX 1

## KEY PERFORMANCE INDICATORS

## PART 1

## KEY PERFORMANCE INDICATORS TABLES

The Key Performance Indicators that shall apply to the Operational Services and Optional Services are set out below:-

## 1. KEY PERFORMANCE INDICATORS

No	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI 1	Service Availability	See paragraph 2 of Part 2 of this Appendix	Monthly	Target Performance Level: Performance $\geq 99\%$  Minor KPI Failure: 98.0% – 98.9%  Serious KPI Failure: 96.0% – 97.9%  KPI Service Threshold: below 96%	0   1  2  3
KPI 2	Average System Response Time	See paragraph 3 of Part 2 of this Appendix	Monthly	Target Performance Level: Performance $< 0.1$ seconds  Minor KPI Failure: 0.1 – 0.29 seconds  Serious KPI Failure: 0.3 – 0.5 seconds  KPI Service Threshold: $> 0.5$ seconds	0  1  2  3
KPI 3	Average Help Desk Call Answering Times	See paragraph 4 of Part 2 of this Appendix	Monthly	Target Performance Level: Performance $\leq 10$ seconds  Minor KPI Failure: 11-20 seconds  Serious KPI Failure: 21-30 seconds  KPI Service Threshold: over 30 seconds	0  1  2  3
KPI 4	Average Help Desk Response Times during system up-time	See paragraph 5 of Part 2 of this Appendix	Monthly	Target Performance Level: up to 3 hours  Minor KPI Failure: over 3 hours up to 4 hours  Serious KPI Failure: over 4 hours up to 6 hours  KPI Service Threshold: over 6 hours	0  1  2  3

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No	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI 5	Average Help Desk Response Times during Unplanned System Down-time	See paragraph 5 of Part 2 of this Appendix	Monthly	Target Performance Level: up to 1 hour  Minor KPI Failure: over 1 hour up to 2 hours  Serious KPI Failure: over 2 hours up to 4 hours  KPI Service Threshold: over 4 hours	0  1  2  3
KPI 6	Average Fix Rate for Resolution of Logged Issues on First Response (during system up-time)	See paragraph 6 of Part 2 of this Appendix	Monthly	Target Performance Level: 75%  Minor KPI Failure: 70-74.9%  Serious KPI Failure: 60-69.9%  KPI Service Threshold: <60%	0  1  2  3
KPI 7	Average Fix Rate for Resolution of Logged Issues Not Resolved on First Response (during system up-time) (during system up-time)	See paragraph 6 of Part 2 of this Appendix	Monthly	Target Performance Level: within two Working Days  Minor KPI Failure: 1-2 Working Days  Serious KPI Failure: 3-5 Working Days  KPI Service Threshold: Over 5 Working Days	0  1  2  3
KPI 8	Satisfaction Surveys	See paragraph 7 of Part 2 of this Appendix	Per issue logged	Target Performance Level: >90% neutral or positive responses  Minor KPI Failure: 80-90% neutral or positive responses  Serious KPI Failure: 70-79.9% neutral or positive responses  KPI Service Threshold: below 70% neutral or positive responses	0  1  2  3
KPI 9	IT Health Check	See paragraph 8 of Part 2 of this Appendix	Annually	Target Performance Level: Zero Vulnerabilities identified  Serious KPI Failure: 1-4 vulnerabilities identified  KPI Service Threshold: 5 or more identified	0  2  4



No	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI 10	Breach of Security	Has the definition set out in Schedule 1 and Part 2 below	Annually	<p>Target Performance Level: Zero Breaches of Security</p> <p>Serious KPI Failure: 1 Breach of Security during the Initial Contract Period, and each subsequent Contract Period thereafter.</p> <p>KPI Service Threshold: More than one Breach of Security during the Initial Contract Period, and each subsequent Contract Period thereafter.</p>	<p>0</p> <p>50% Annual Contract Value</p> <p>100% Annual Contract Value</p>

## PART 2

### DEFINITIONS AND DETERMINATION

#### 1. AVAILABLE

##### 1.1 The IT Environment and/or the Services shall be Available when:-

- 1.1.1 End Users are able to access and utilise all the functions of the Supplier System and/or the Services;
- 1.1.2 the Supplier System is able to process the Authority Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and
- 1.1.3 all Performance Indicators other than Service Availability are above the KPI Service Threshold.

#### 2. SERVICE AVAILABILITY

##### 2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:-

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this paragraph 2:-

2.2.1 Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Part 1 paragraph 4 shall be subtracted from the total number of hours in the relevant Service Period; and

2.2.2 Service Points shall accrue if:-

- (a) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
- (b) where Permitted Maintenance undertaken by the Supplier exceeds the agreed number of hours in any Service Period.

### 3. **RESPONSE TIMES**

3.1 The "**System Response Time**" is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

3.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

### 4. **HELP DESK CALL ANSWERING TIMES**

4.1 Measurement of Help Desk call answering times will be based on the time taken for a Help Desk operative to answer the telephone to a representative of the Authority. It is expected that the normal mechanism for recording call answering times will be via the Supplier's call monitoring software.

4.2 The Help Desk Call Answering Time shall be the average Help Desk Call Answering Time measured over the course of a Service Period.

4.3 The Supplier shall monitor the Help Desk call answering times and shall provide the results of such monitoring to the Authority in accordance with the provisions of Part 2 of this Schedule.

### 5. **HELP DESK RESPONSE TIMES**

5.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to provide a response to a Service Incident reported to the Supplier. It is expected that the normal mechanism for logging an issue will be via either a customer help portal or via email to a designated address which provides an issue number automatically, Telephone is expected to be used only in the case of urgent issues.

5.2 The Help Desk Response Time shall be the average Help Desk Response Time measured over the course of a Service Period during system up-time; and Unplanned System Downtime respectively.

5.3 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Authority in accordance with the provisions of Part 2 of this Schedule.

### 6. **FIX RATE**

6.1 The "**Fix Rate**" of a Service Incident is the percentage of Service Incidents reported to the Supplier Resolved on first exchange of messages or within two Working Days (see KP6 and KP7 above respectively) where 'first exchange of messages' means the first response of the supplier to once an issue is logged.

6.2 Where "**Resolved**" means in relation to a Service Incident either:-

- 6.2.1 the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or
- 6.2.2 the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority.

6.3 The Supplier shall measure Fix Rates as part of its service management responsibilities and report periodically to the Authority on Fix Rates as part of the Performance Monitoring Report.

## 7. **SATISFACTION SURVEYS**

7.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a "**Satisfaction Survey**"), the results of which may be reported at the Performance Review Meetings. The subject matter of Satisfaction Surveys may include:-

- 7.1.1 the assessment of the Supplier's performance by the End Users against the agreed Key Performance Indicators; and/or
- 7.1.2 other suggestions for improvements to the Services.

## 8. **IT HEALTH CHECKS**

8.1 IT Health Checks must be carried out in accordance with Schedule 2.4 paragraph 7.

## 9. **DATA BREACH**

9.1 A data breach that does not have any significant impact on or consequences for the Authority and/or Service Recipients will not be considered as a Serious KPI Failure for KPI 10. For clarity, some examples of Data Breach which would indicate a Serious KPI Failure include where a failure in the Supplier system or Supplier support services are responsible for:

- a) Unauthorised access to data and/or information that affect a procurement outcome
- b) Unauthorised access to data and/or information that requires a procurement project to be restarted
- c) Unauthorised access to and/or loss of information constituting the Intellectual Property of a third party e.g. information belonging to a bidder or supplier which could result in financial loss to that bidder or supplier and reputational and/or financial impact to the Authority and/or other Service Recipients. In this context, unauthorised access means access by any party other than the Authority and other Service Recipients and the owner of the Intellectual Property. Intellectual Property in this context means copyright, patents, inventions, semiconductor topography, trademarks, designs, knowhow, trade secrets and other confidential information such as pricing, tender submissions and data and information relating to supplier performance.
- d) Unauthorised access to and/or loss of any information held in the system which could comprise the security of any Authority sites and/or the sites of other Service Recipients e.g. site drawings or plans.
- e) In the unlikely event the Authority requires the system to hold Official-Sensitive Nuclear Information (which would require additional levels of security in the system to be agreed with the Supplier) a breach constitutes the unauthorised access and/or loss of any Official-Sensitive Nuclear Information however small.
- f) A GDPR breach where the ICO recommends remedial actions to be made. IT Health Checks must be carried out in accordance with Schedule 2.4 paragraph 7.

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**SCHEDULE 2.3**

**STANDARDS**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

**I. DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

**1. GENERAL**

- 1.1 Throughout the Term, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier's provision, or the Authority's or a Service Recipient's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 1.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's or a Service Recipient's receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 1.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

**2. TECHNOLOGY AND DIGITAL SERVICES PRACTICE**

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice> and agreed with the Contracting Authority.

**3. OPEN DATA STANDARDS & STANDARDS HUB**

- 3.1 The Supplier shall comply, to the extent within its control, with UK Government's Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 3.2 Without prejudice to the generality of paragraph 1.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.
- 3.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non--proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under paragraph 3.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

**4. TECHNOLOGY ARCHITECTURE STANDARDS**

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

**5. ACCESSIBLE DIGITAL STANDARDS**

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

- 5.1 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA [to be replaced with WCAG 2.2]; or
- 5.2 ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

**6. SERVICE MANAGEMENT SOFTWARE & STANDARDS**

6.1 Subject to paragraphs 1 to 3 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the provision of the Services, including the following and/or their equivalents:-

- 6.1.1 ITIL v4;
- 6.1.2 ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
- 6.1.3 ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
- 6.1.4 ISO 10007 "Quality management systems – Guidelines for configuration management";
- 6.1.5 ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019 [to be replaced by ISO/IEC AWI 27031];
- 6.1.6 in accordance with the requirements set out in Schedule 2.4 (Security Requirements):-
  - (a) ISO/IEC 27001:2013 (or any equivalent as approved by the Authority in writing); and
  - (b) Cyber Essentials PLUS.

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

**7. ENVIRONMENTAL STANDARDS**

7.1 The Supplier warrants that, at all times during the Term, it and its sub-contractors shall comply with the principles of ISO 14001 (or equivalent) for its environmental management and that of the subcontractors, and shall comply with and maintain compliance throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that all Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.

7.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).

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

- 7.4 The Supplier shall comply with the EU Code of Conduct on Data Centres' Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.
- 7.5 The Supplier shall comply with the Authority and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document "Greening Government: ICT Strategy issue (March 2011)" at <https://www.gov.uk/government/publications/greening-government-ict-strategy>.

**SCHEDULE 2.5**

**INSURANCE REQUIREMENTS**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version



## **INSURANCE REQUIREMENTS**

### **1. OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Appendix 1 and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor operating the same or substantially similar business in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:-
  - 1.3.1 of good financial standing;
  - 1.3.2 appropriately regulated;
  - 1.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and
  - 1.3.4 except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

### **2. GENERAL OBLIGATIONS**

Without limiting the other provisions of this Agreement, the Supplier shall:-

- 2.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- 2.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- 2.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3. FAILURE TO INSURE**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to cancel, rescind or suspend any of the Insurances or cover, or to treat any of the Insurances, cover or claim as avoided in whole or in part refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the

reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

**4. EVIDENCE OF INSURANCES**

- 4.1 The Supplier shall upon the Effective Date and within fifteen (15) Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.
- 4.2 If the Insured is required to provide Insurance beyond the end of the Term by this Agreement, then the Supplier shall continue to provide such evidence as set out in and in accordance with paragraph 4.1 for so long as this requirement continues.
- 4.3 The Supplier shall also provide any further information reasonably requested by the Authority in relation to the Insurances at any time during the Term on reasonable notice.

**5. CANCELLATION**

- 5.1 Subject to paragraph 6.2, the Supplier shall notify the Authority in writing at least thirty (30) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under paragraph 4, paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

**6. INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES**

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

**7. LIMIT OF LIABILITY**

- 7.1 Neither failure to comply, nor full compliance, with the insurance provisions of the Agreement shall limit or relieve the Supplier of its other liabilities and obligations under this Agreement.

## **APPENDIX 1**

### **REQUIRED INSURANCES**

#### **PART 1**

##### **INSURANCE CLAIM NOTIFICATION**

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of one hundred thousand pounds sterling £100,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

#### **PART 2**

##### **THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

1. **INSURED**

The Supplier.

2. **INTEREST**

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:-

2.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.2 loss of or damage to physical property;

happening during the period of insurance (as specified in paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

3. **LIMIT OF INDEMNITY**

3.1 Not less than Two Hundred and Fifty Thousand Pounds (£250,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but One Million Pounds (£1 million) in the aggregate per annum in respect of products and pollution liability.

4. **TERRITORIAL LIMITS**

4.1 The Supplier shall meet its insurance obligations under United Kingdom Law in full as set out in Appendix 1.

5. **PERIOD OF INSURANCE**

From the date of this Agreement for the Term and renewable on an annual basis for the duration of unless agreed otherwise by the Authority in writing.

6. **COVER FEATURES AND EXTENSIONS**

6.1 Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

**7. PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**8. MAXIMUM DEDUCTIBLE THRESHOLD**

Not to exceed £250 for each and every third party property damage claim (personal injury claims to be paid in full).

**PART 3****UNITED KINGDOM COMPULSORY INSURANCES**

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

**PART 4****ADDITIONAL INSURANCES**

The Supplier shall meet as a minimum the insurance obligations as set out below:-

Employer's (Compulsory) Liability Insurance	£5 million
Public Liability Insurance	£1 million
Professional Indemnity Insurance	£1 million in the annual aggregate
Product Liability Insurance	£1 million in the annual aggregate
Cyber and Data Insurance	£1 million

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**SCHEDULE 3**

**AUTHORITY RESPONSIBILITIES**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

**1. INTRODUCTION**

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be "Authority Responsibilities" and cross referenced in the table in paragraph 3.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.
- 1.3 Any capitalised terms used in this Schedule that are not defined in Schedule 1 (*Definitions*) shall have the meanings as defined in Schedule 2.1 (*Service Description*).

**2. GENERAL OBLIGATIONS**

The Authority shall:-

- 2.1 perform those obligations of the Authority which are set out in the Clauses of this Agreement and the paragraphs of the Schedules (except Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*));
- 2.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- 2.3 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Implementation Plan;
- 2.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- 2.5 procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

**3. SPECIFIC OBLIGATIONS**

- 3.1 The Authority shall, in relation to this Agreement perform the Authority's obligations identified as such in this Agreement the details of which are set out in Appendix 1 where the following definitions shall apply:-
- 3.1.1 "Responsible" shall have the meaning to have the job or duty of completing a task to enable the Supplier to deliver its obligations under this Agreement, for example reviewing or signing off documents;
- 3.1.2 "Accountable" shall have the meaning to be responsible for making sure decisions and actions are undertaken by the Authority and/or Service Recipients and that outputs meet

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the Authority's requirements to enable the Supplier to deliver its obligations under this Agreement; and

- 3.1.3 "Support Role" shall have the meaning to provide assistance to the Supplier to enable the Supplier to perform its obligations under the contract, for example to identify gaps between the Supplier Solution and Authority requirements.

#### 4. **ADDITIONAL OBLIGATIONS**

- 4.1 The Authority Responsibilities as set out in Appendix 1 and Appendix 2 of Schedule 6.1 (*Implementation Plan*) shall also apply.

## APPENDIX 1

## AUTHORITY OBLIGATIONS

Phase	Activity	Sub-Activity	NDA Responsible	NDA Accountable	NDA Support Role
Mobilisation	Conduct meeting to discuss data cleansing and provision	Develop data cleansing and data migration plan	No	Yes	No
Design	Develop As-is process and technology view (process and technologies)	Capture current processes and technology used in NDA	No	Yes	No
	Identify pain points experienced through current process and technology	Run workshops with stakeholders to understand current process and pain-points	No	Yes	No
	Develop To-Be Design Configuration workbook Template (configuration vs. customisation)	Provide Atamis standard workbook template	No	No	Yes
	Gather requirements (MoSCoW framework)	Facilitate workshops with Stakeholders to establish Contract Management Module requirements	No	Yes	No
	Gather requirements (MoSCoW framework)	Facilitate workshops with Stakeholders to establish Tender Management module requirements	No	Yes	No
	Gather requirements (MoSCoW framework)	Facilitate workshops with Stakeholders to establish Pipeline Management module requirements	No	Yes	No
	Gather requirements (MoSCoW framework)	Facilitate workshops with Stakeholders to establish Supplier Experience requirements	No	Yes	No
	Gather requirements (MoSCoW framework)	Facilitate workshops with Stakeholders to establish ERP Integration requirements	No	Yes	No
	Gather requirements (MoSCoW framework)	Facilitate workshops with Stakeholders to establish Technical requirements	No	Yes	No
	Gather requirements (MoSCoW framework)	Review and sign-off requirements	Yes	Yes	No
	Gather Master Data requirements	Share cleansed master data	Yes	Yes	No
	Identify functional specification for design interfaces		No	No	Yes



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	Identify technical specifications for design interfaces and look and feel of design interfaces		No	No	Yes
	Populate To-Be Design Configuration Workbook	Functional requirements	No	No	Yes
	Develop Functional Gap Analysis (requirements vs. out of the box/ configurable capability)	Analyse functional requirements gathered and customisation required	No	No	Yes
	Develop Functional Gap Analysis (requirements vs. out of the box/ configurable capability)	Present gap analysis and obtain sign-off functional gap from NDA	No	No	Yes
	Develop Technical Gap Analysis (requirements vs. out of the box/ configurable capability)	Analyse technical requirements gathered and customisation required	No	No	Yes
	Develop Technical Gap Analysis (requirements vs. out of the box/ configurable capability)	Present gap analysis and obtain sign-off technical gap from NDA	No	No	Yes
	Develop Change Management & Communications Plan and Strategy	Develop Training logistics, plan, timelines, # of trainees, # of workshops, location, delivery approach	No	No	Yes
	Develop Change Management & Communications Plan and Strategy	Develop go-live communication, including supplier onboarding communication	No	No	Yes
	Develop Change Management & Communications Plan and Strategy	Develop roll-out plan, incl. systems integration roll-out	No	No	Yes
Build	Configure ATAMIS based on Design Documentation	Conduct high-level QA of configuration, approve before releasing to NDA	No	No	Yes
	Develop User Acceptance Test Scenarios / Scripts	Update scripts based on specific NDA requirements	No	No	Yes
	Develop User Acceptance Test Scenarios / Scripts	Review and sign-off UAT scripts	Yes	Yes	Yes
	Develop Training Content	Share standard training content	No	No	Yes
	Develop Training Content	Update training content based on specific NDA requirements	No	No	Yes
	Develop Training Content	Review training content and provide feedback	No	No	Yes
	Develop Training Content	Execute Change Management & Communications Strategy	No	No	Yes
	Develop Training Content	Review and sign-off training content	Yes	Yes	Yes

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Test and Deliver	Perform User and Integration Testing	Attend UAT testing workshops	Yes	Yes	No
	Perform User and Integration Testing	Conduct UAT testing and provide feedback	Yes	Yes	Yes
	Perform User and Integration Testing	Identify failed criteria from UAT testing	Yes	Yes	Yes
	Perform User and Integration Testing	Re-test and sign-off on all resolved criteria	Yes	Yes	Yes
	Setup users in system		No	Yes	No
	Train Super Users		No	Yes	No
	Train End Users		Yes	Yes	No
Deploy and dry run	Validate Go-Live Success		Yes	Yes	No
	Develop ATAMIS custom end user guides		No	Yes	No
	Maintain ATAMIS user guide in line with scheduled releases		No	Yes	No
	Review and Diagnose queries from full user group	Feedback system and data issues	Yes	Yes	No
	Make Go/No-Go Decision for Future Deployments		Yes	Yes	No
Post go live	Provide legacy data for migration		Yes	Yes	No
Access to Systems	NDA to provide access to systems	NDA to arrange/enable access to systems (if required for data extract or interface specified within scope)	Yes	Yes	Yes

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**SCHEDULE 4.2**

**COMMERCIALLY SENSITIVE INFORMATION**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

## **I DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

### **1 COMMERCIAL SENSITIVE INFORMATION**

- 1.1 The information of a commercial sensitive nature which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss is set out in Appendix 1.

## APPENDIX 1

## COMMERCIAL SENSITIVE INFORMATION

No.	Date	Item(s)	Duration of Confidentiality
1	12/02/2021	All documentation relating to our pricing and financial modelling including the basis on which the final price is calculated, with the exception of information the Authority is required to provide to unsuccessful bidders under Regulation 86(2)(b) of the Public Contracts Regulations 2015.	Perpetuity
2	12/02/2021	Personal information relating to individuals including, but not limited to CVs, pen portraits and client contact details.	Perpetuity
3	12/02/2021	Approach and methodologies.	Perpetuity
4	19/07/2021	Schedule 2.4 (Security Management)	Perpetuity
5	19/07/2021	Schedule 4.1 (Supplier Solution)	Perpetuity
6	19/07/2021	Schedule 5 (Software)	Perpetuity
7	19/07/2021	Schedule 7.1 (Charges and Invoicing)	Perpetuity

**SCHEDULE 6.1**

**IMPLEMENTATION PLAN**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

**1. INTRODUCTION**

**1.1 This Schedule:-**

- 1.1.1 defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- 1.1.2 identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

**2. OUTLINE IMPLEMENTATION PLAN**

**2.1 The Outline Implementation Plan is set out in Appendix 1.**

**2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 27 (*Authority Cause*)).**

**3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN**

**3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within twenty (20) Working Days of the Effective Date.**

**3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:-**

- 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- 3.2.2 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:-
  - (a) the completion of each design document;
  - (b) the completion of the build phase;
  - (c) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Milestone Achievement Procedure*);
  - (d) the completion of data migration and
  - (e) training and roll-out activities;
- 3.2.3 clearly outlines all the steps required to Achieve each of the Milestones together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
- 3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- 3.2.5 is produced using a software tool as specified by the Authority, or as otherwise agreed by the Authority.

- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with paragraph 3.1, the Authority shall have the right:-
- 3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:-
- (a) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
  - (b) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
  - (c) any other work in progress in relation to the Detailed Implementation Plan;
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:-
- 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
- 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than ten (10) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the draft Detailed Implementation Plan:-
- 3.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within ten (10) Working Days of the date of the Authority's notice of rejection. The provisions of paragraph 3.4 and this paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.
- 4. UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN**
- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:-
- 4.1.1 the Supplier shall submit an updated Detailed Implementation Plan to the Authority every month starting one (1) month from the Effective Date;
- 4.1.2 without prejudice to paragraph 4.1.1, the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within ten (10) Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
- 4.1.3 any revised Detailed Implementation Plan shall (subject to paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in paragraph 3; and
- 4.1.4 the Supplier's performance against the Implementation Plan shall be monitored at Service, System Management and Performance Review Meetings (as defined in Schedule 8.1



(*Governance*)) and, where appropriate, the Joint Implementation Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than five (5) Working Days in advance of each meeting.

- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any amendments to the Detailed Implementation Plan which are:-

4.2.1 material, shall be subject to the Change Control Procedure provided that:-

- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 27 (*Authority Cause*); and

4.2.2 non-material, shall be subject to the Document Change Procedure.

- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

## 5. **RELATED IMPLEMENTATION PLANS**

- 5.1 The Supplier acknowledges that the Detailed Implementation Plan may need to be consistent with and interoperate with, the implementation plans of the Authority and other third party suppliers to the Authority including those of any Other Supplier as determined by the Authority (each a "**Related Implementation Plan**").

- 5.2 The Supplier shall (at no cost to the Authority) cooperate with the Authority and other third party suppliers to the Authority (including the Other Suppliers (which may include attendance at workshops) and promptly provide to such third parties all documentation, data, information or other assistance reasonably requested by the Authority in relation to:-

5.2.1 the preparation of the Detailed Implementation Plan and Related Implementation Plans; and

5.2.2 the alignment of the Detailed Implementation Plan with the Related Implementation Plans (and vice versa).

## 6. **GOVERNMENT REVIEWS**

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

## APPENDIX 1

## OUTLINE IMPLEMENTATION PLAN – MAIN SYSTEM

\*All Indicative Milestone Dates are subject to the contract Effective Date.

NDA group businesses will begin using the Supplier Solution in phases, for example, Magnox users will begin using the Supplier Solution before Sellafield users. It is therefore envisaged that Magnox users will need new user support, as the system 'beds in', at the same time training is underway for Sellafield users. Additional Help Desk services are required for the first few months post competition of delivery of Milestone 1.5.

Milestone	Deliverables	Duration (Working Days)	Indicative Milestone Date*	Authority Responsibilities (if applicable)
1.1 Mobilisation Complete	Project Plan Risk and Issues Management Plan and Registers Service Continuity Plan Detailed Implementation Plan Service Management Plan Outline Contract Exit Plan		31/07/2021	Authority to approve all plans.  Authority to provide Milestone Certificate on fulfilment of approved plan.
1.2 Full Development / Configuration Complete	System developed and configured in accordance with Authority requirements and ready to commence testing System and User Acceptance Testing Strategy Updated Risk and Issues Management Plan and Registers Updated Disaster Recovery Plan	45	31/08/2021	Authority sets the functionality requirements and configuration e.g. of workflows and fields.  Authority to provide Milestone Certificate on fulfilment of approved plan.
1.3 Testing Complete	Updated Risk and Issues Management Plan Updated Project Plan Updated Disaster Recovery Plan Reporting provided in accordance with Schedule 8.4. Defects Log  System Testing Report <ul style="list-style-type: none"> <li>Integration Testing across the modules of the Lot A system</li> <li>Functional Requirement Testing</li> <li>Destructive Testing</li> </ul>	30	11/10/2021	Authority to approve all test reports and plans.  Authority staff available to support System Testing and undertake UAT, as agreed in the detailed Implementation Plan agreed between the Contractor and the Authority.  Authority to provide Milestone Certificate on fulfilment of approved plan.

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Milestone	Deliverables	Duration (Working Days)	Indicative Milestone Date*	Authority Responsibilities (if applicable)
	<ul style="list-style-type: none"> <li>Penetration Testing</li> <li>Fault Injection Testing</li> <li>Resolution of Defects and re-test</li> <li>Final Inspection and Testing Report, with Authority approval</li> </ul> <p>User Acceptance Testing Report</p> <ul style="list-style-type: none"> <li>Test Scripts provided to testers</li> <li>User Acceptance Testing</li> <li>Resolution of Defects and re-test</li> <li>Final UAT Report</li> </ul>			
1.4 User Readiness for Service	<p>Training Plan developed (including organisation phasing to reflect staggered system Cutover)</p> <p>Updated Risk and Issues Log</p> <p>Operations Plan updated</p> <p>Data Migration &amp; Cutover Plan</p> <p>Training Plan delivered</p> <p>Cutover Plan finalised</p> <p>Detailed Contract Exit Plan</p>	65	07/01/2022	<p>Authority to approve all reports and plans.</p> <p>Authority to provide training and Data Migration requirements.</p> <p>Authority to provide Milestone Certificate on fulfilment of approved plan.</p>
1.5 System Implementation Complete	<p>Supplier Helpdesk Trained</p> <p>Magnox Limited and Dounreay Site Restoration Limited go-live est. 08/11/2021</p> <p>Sellafield go-live est. 29/11/2021</p> <p>International Nuclear Services Limited and Direct Rail Services Limited go-live est. 05/01/2022</p> <p>Radioactive Waste Management Limited, Low Level Waste (LLW) Repository Limited and National Nuclear Laboratory Limited go-live est. 12/01/2022</p> <p>Nuclear Decommissioning Authority 08/11/2021</p> <p>Service access for other Service Recipients will follow under NDA operational management</p>	It is expected Magnox, Dounreay and NDACC training commences 25/10/2021	31/01/2022	<p>Authority to deliver Communications Plan.</p> <p>Authority to give final approval for system Cutover for each organisation.</p> <p>Authority to provide Milestone Certificate on fulfilment of approved plan.</p>

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Milestone	Deliverables	Duration (Working Days)	Indicative Milestone Date*	Authority Responsibilities (if applicable)
1.6 Data Migration Complete	Data Migration Testing and Report Data Migration from legacy systems	50	18/03/2022	Authority to approval all reports and plans.  Authority to provide Milestone Certificate on fulfilment of approved plan.
1.7 In Service Support	Post Implementation Report Data Conversion and Cut-Over Plan Service Delivery Reports Risk and Issues Log Defects Log	9	31/03/2022	Authority to approval all reports and plans.  Authority to provide Milestone Certificate on fulfilment of approved plan.
1.8 Contract Exit	Updated Contract Exit Plan covering data/information management and data migration. The updated Contract Exit Plan is to reflect the current data/information held in the System and any additional operational considerations not previously reflected in the Contract Exit Plan at Milestone 1.4. Exit Plan delivered. Post Contract Exit Report	Not specified	13/06/2025*  Indicative based on 4 year duration. If extension options used 13/06/2027 or 13/06/2029.	Authority to approval all reports and plans.  Authority to provide Milestone Certificate on fulfilment of approved plan.

## APPENDIX B

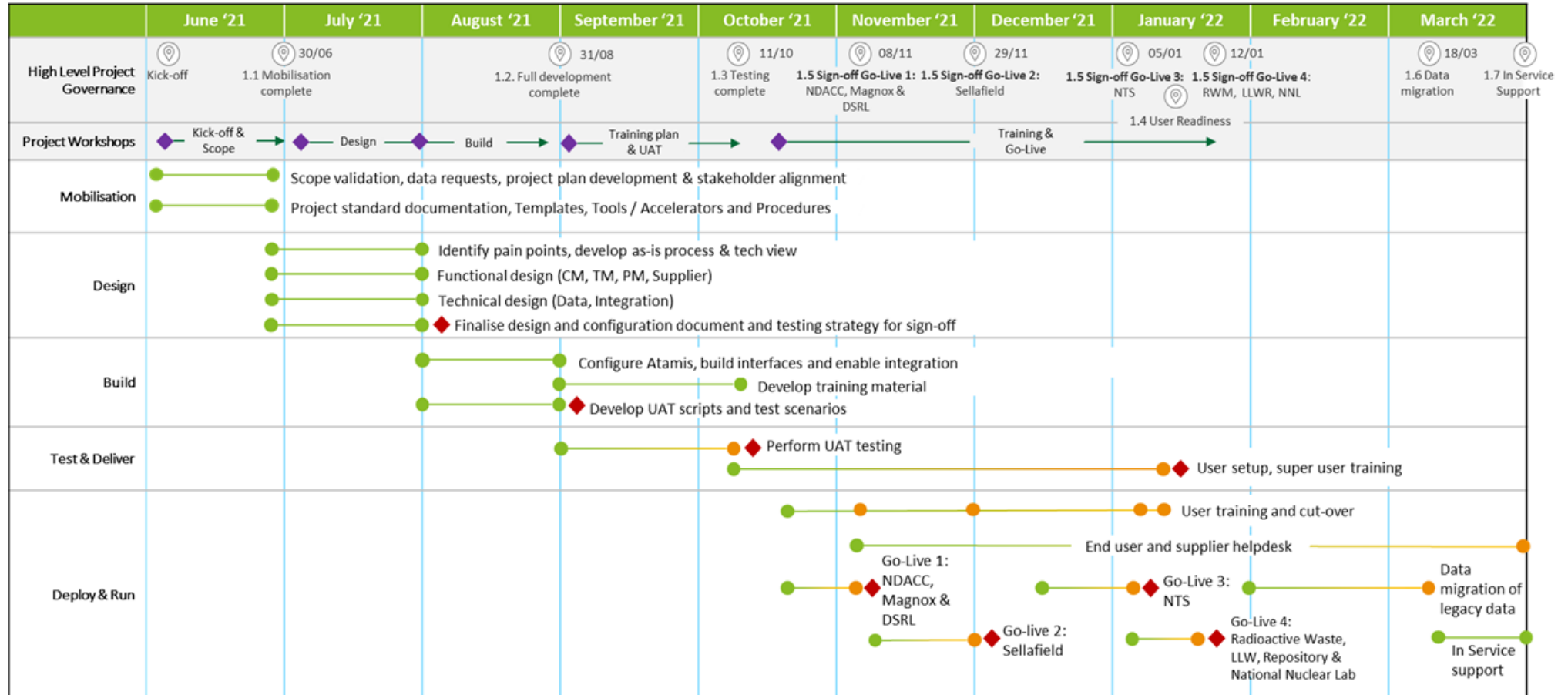
## OUTLINE IMPLEMENTATION PLAN – LOT A SYSTEM INTERFACES WITH LOT B, C, D AND E SYSTEMS

Milestone	Deliverables	Duration (Working Days)	Indicative Milestone Dates for interfaces with each external system				Authority Responsibilities (if applicable)
			Lot B	Lot C	Lot D	Lot E	
2.1 Interface Mobilisation Complete	Project Plan Risk and Issues Management Plan and Registers Disaster Recovery Plan Detailed Implementation Plan Service Management Plan Updated Contract Exit Plan (refer to Milestones 1.4 and 1.8) covering Interface Decommissioning, data / management (and data migration as required)	20	2.1.a	2.1.b	2.1.c	2.1.d	Authority to approve all plans.  Authority to provide Milestone Certificate on fulfilment of approved plan.
2.2 Interface Full Development / Configuration Complete	Interface developed and configured in accordance with Authority requirements and ready to commence testing Interface and User Acceptance Testing Strategy Updated Risk and Issues Management Plan and Registers Updated Disaster Recovery Plan	To be agreed as part of Interface Mobilisation	2.2.a  To be agreed as part of Interface Mobilisation	2.2.b  To be agreed as part of Interface Mobilisation	2.2.c  To be agreed as part of Interface Mobilisation	2.2.d  To be agreed as part of Interface Mobilisation	

## APPENDIX 3

## DRAFT IMPLEMENTATION PLAN – MAIN SYSTEM

The draft implementation plan for the main system is set out below. All dates are indicative (mobilisation is taking place in parallel with contract finalisation and final dates for sign off of milestone 1.1 will take place post contract signature).



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**SCHEDULE 6.2**

**MILESTONE ACHIEVEMENT PROCEDURE**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

1. **DEFINITIONS**

1.1 In this Schedule, the definitions set out in Schedule 1 shall apply.

2. **SCOPE**

2.1 This Schedule sets out the principles and procedures in respect of Achievement by the Supplier of a Milestone.

2.2 In respect of each Milestone the Milestone Achievement Procedure shall include:-

2.2.1 conducting any Testing (where required in accordance with the Implementation Plan or any future Change Authorisation Note (as applicable));

2.2.2 demonstrating successful completion of Achievement Criteria; and

2.2.3 resolution of a failure to meet any Acceptance Criteria (if any).

2.3 This Schedule will operate alongside:-

2.3.1 for Implementation, Schedule 6.1 (*Implementation*) and the Implementation Plan shall set out the Achievement Criteria (including details of any Testing and supporting evidence required) for all Milestones to be Achieved during Implementation; and

2.3.2 for future Projects, Schedule 8.2 (*Change Control Procedure*) and the applicable Change Authorisation Note shall set out the Achievement Criteria (including details of any Testing



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and supporting evidence required) for all Milestones to be Achieved during the relevant Project.

### 3. **RISK**

3.1 Unless otherwise agreed in writing by the Authority, Achievement of any Milestone shall only occur when all Achievement Criteria relating to it have been met and the Authority has issued a Milestone Achievement Certificate on an unconditional basis in accordance with this Schedule.

3.2 The issue of a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:-

3.2.1 operate to transfer any risk that the relevant Milestone (including any component items of that Milestone, such as a Deliverable) is complete or will meet and/or satisfy the Authority's requirements for that Milestone; or

3.2.2 affect the Authority's right subsequently to reject any Milestone (including any component items, such as a Deliverable) to which the Milestone Achievement Certificate relates.

3.3 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed to the subsequent Milestone), the Supplier shall remain solely responsible for ensuring that:-

3.3.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;

3.3.2 the Services are implemented in accordance with this Agreement; and

3.3.3 each Target Performance Level is met from the relevant Operational Service Commencement Date.

### 4. **ISSUE OF A MILESTONE ACHIEVEMENT CERTIFICATE**

4.1 The Supplier shall deliver to the Authority the documentary evidence agreed to be produced as part of the Implementation Plan or Change Authorisation Note (as applicable), together with any supporting information reasonably required, in sufficient time to Achieve a Milestone on or before the Milestone Date for that Milestone.

4.2 Within ten (10) Working Days of receipt of the documentary evidence from the Supplier in accordance with paragraph 3.1 (or such other period as may be agreed), the Authority shall notify the Supplier whether the Supplier has successfully completed, to the reasonable satisfaction of the Authority, the applicable Achievement Criteria and the Milestone is therefore Achieved or not. Where:-

4.2.1 the Milestone is Achieved, the Authority shall issue a Milestone Achievement Certificate in respect of the given Milestone; or

4.2.2 the Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out the reasons for the relevant Milestone not being Achieved. Thereafter, where required by the Authority, the Supplier shall re-submit the documentary evidence together with any supporting information reasonably required as many times as is necessary until the Supplier has successfully completed, to the reasonable satisfaction of the Authority, the applicable Achievement Criteria (whereupon the Authority shall issue a Milestone Achievement Certificate).

4.3 The grant of a Milestone Achievement Certificate (where applicable and as identified in the relevant Implementation Plan or Change Authorisation Note) shall entitle the Supplier to the receipt of a

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payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).

- 4.4 Without prejudice to the Authority's other remedies, if the Supplier fails through its Default to Achieve a Milestone on or before the relevant Milestone Date in accordance with this Schedule such failure shall constitute a Notifiable Default by the Supplier for the purposes of Clause 26.1 (*Rectification Plan Process*).
- 4.5 Where the Authority notifies the Supplier that it does not consider that the Achievement Criteria for any Milestone have been met in accordance with paragraph 3.2.2, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Achievement Criteria in accordance with an agreed Rectification Plan provided that:-
  - 4.5.1 any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within ten (10) Working Days of receipt of the Authority's notice provided pursuant to paragraph 3.2.2); and
  - 4.5.2 where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

APPENDIX 1

MILESTONE ACHIEVEMENT CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [insert description of Milestone]

We refer to the agreement (the "**Agreement**") relating to the provision of the Services between the [name of Authority] (the "**Authority**") and [name of Supplier] (the "**Supplier**") dated [date].

Capitalised terms used in this certificate have the meanings given to them in [Schedule 1 (Definitions)] or [Schedule 6.2 (Milestone Achievement Procedure)] of the Agreement.

[We confirm that all the Supplier has successfully completed the Achievement Criteria for Milestone [number] in accordance with the [Implementation Plan]OR[Change Authorisation Note]]\*

OR

[This Milestone Achievement Certificate is granted pursuant to paragraph 3.23.5 of [Schedule 6.2 (Milestone Achievement Procedure)] of the Agreement on the condition that any Achievement Criteria not met (as determined by the Authority) are remedied in accordance with the Rectification Plan attached to this certificate.]\*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of [Schedule 7.1 (Charges and Invoicing)]]\*

\*delete as appropriate

Yours faithfully

[Name]

[Position]

acting on behalf of [Authority]

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**SCHEDULE 7.2**

**PAYMENTS ON TERMINATION**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

1. **DEFINITIONS**

- 1.1 In this Schedule, the definitions set out in Schedule 1 shall apply.

2. **TERMINATION PAYMENT**

The termination payment payable pursuant to Clause 30.3 (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment (the "**Termination Payment**").

3. **BREAKAGE COSTS PAYMENT**

- 3.1 The Supplier may be entitled to recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:-

- 3.1.1 would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- 3.1.2 are unavoidable, proven, reasonable, and not capable of recovery;
- 3.1.3 are incurred under arrangements or agreements that are directly associated with this Agreement;
- 3.1.4 are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- 3.1.5 relate directly to the termination of the Services;
- 3.1.6 is not due to the occurrence of any Supplier Termination Event defined in Schedule 1.

4. **LIMITATION ON TERMINATION PAYMENT**

- 4.1 Subject to paragraph 4.3, the Termination Payment shall not exceed the lower of:

- 4.1.1 the aggregate of the relevant limits set out in Appendix 1 for the Breakage Costs Payment and the Unrecovered Payment; and
- 4.1.2 100% of the estimate of the Termination Payment set out in any relevant Termination Estimate.

- 4.2 The Breakage Costs Payment shall not exceed the lower of:-

- 4.2.1 the relevant limit set out in Appendix 1; and
- 4.2.2 100% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

- 4.3 The Unrecovered Payment shall not exceed the lowest of:-

- 4.3.1 the relevant limit set out in Appendix 1;
- 4.3.2 100% of the estimate of the Unrecovered Payment set out in any relevant Termination Estimate; and
- 4.3.3 the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

**5. MITIGATION OF THE TERMINATION PAYMENT**

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate the Termination Payment by:-

- 5.1.1 the appropriation of Assets, employees and resources for other purposes;
- 5.1.2 at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
- 5.1.3 in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Termination Payment payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in *Schedule 8.3 (Dispute Resolution Procedure)*.

**6. FULL AND FINAL SETTLEMENT**

Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 31.3.1 (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

**7. INVOICING FOR THE PAYMENTS ON TERMINATION**

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in *Schedule 7.1 (Charges and Invoicing)*.

**8. SET OFF**

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

**9. NO DOUBLE RECOVERY**

9.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to *Schedule 8.5 (Exit Management)* in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

9.2 The value of the Termination Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

9.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

**10. ESTIMATE OF TERMINATION PAYMENT**

10.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

10.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination

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Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:-

10.2.1 be based on the relevant amounts set out in the Financial Model;

10.2.2 include:-

- (a) details of the mechanism by which the Termination Payment is calculated;
- (b) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
- (c) such information as the Authority may reasonably require;

10.2.3 [full particulars of the estimated Unrecovered Payment and appropriate supporting documentation;] and

10.2.4 state the period for which that Termination Estimate remains valid, which shall be not less than sixty (60) Working Days.

10.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

10.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

## APPENDIX 1

## MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:-

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment
Anytime in the first Contract Year once the Milestone Achievement Certificate has been issued for Milestone 1.5 System Implementation Complete as defined in Schedule 6.1 ( <i>Implementation Plan</i> )	One month's contract value = Annual Contract Value divided by twelve (12)  Plus,  Any unpaid Service Charges due issue of a Milestone Achievement Certificate.	One and a half (1.5) years' Annual Contract Value
Anytime in the second Contract Year		One (1) year's Annual Contract Value
Anytime in the third Contract Year		Six months (6) Annual Contract Value



**SCHEDULE 7.5**

**FINANCIAL REPORTS AND AUDIT RIGHTS**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

I. **DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

1. **FINANCIAL TRANSPARENCY OBJECTIVES**

- 1.1 The Supplier shall collaborate with the Authority to achieve the following objectives:-

**Understanding the Charges**

- 1.1.1 for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- 1.1.2 for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

**Agreeing the impact of Change**

- 1.1.3 for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- 1.1.4 for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

**Continuous improvement**

- 1.1.5 for the Parties to challenge each other with ideas for efficiency and improvements;
- 1.1.6 to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices, and

(together the "**Financial Transparency Objectives**")

2. **AUDIT RIGHTS**

- 2.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term, any Termination Assistance Period and for a period of eighteen (18) months after the later of the end of the Term and the end of any Termination Assistance Period, to assess compliance by the Supplier of the Supplier's obligations under this Agreement, including for the following purposes:-

- 2.1.1 to review the Supplier's activities in connection with, and performance in respect of, this Agreement (including the IT Environment (or any part of it) and the wider service delivery environment (or any part of it)) and to verify the Supplier's compliance with this Agreement and applicable Law (including the Data Protection Legislation);
- 2.1.2 to verify the accuracy of the Charges and Costs (including the amounts paid to all Sub-contractors and any third party suppliers) and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges, Costs and payments) which shall include the verification of any supporting documentation in respect of such Charges and Costs;
- 2.1.3 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes, any circumstances which may impact upon the financial stability of the Supplier and/or any of the Supplier Group or their ability to provide the Services or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

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- 2.1.4 to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- 2.1.5 to review all information required to be kept by the Supplier pursuant to this Agreement;
- 2.1.6 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- 2.1.7 to review the integrity, confidentiality and security of the information required to be kept by the Supplier pursuant to this Agreement (including the Authority Data); and
- 2.1.8 to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts.

2.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier more than twice in any Contract Year. For the purposes of this paragraph 2.2 the final Contract Year shall end on the last date of the Termination Assistance Period.

2.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier for the purposes of and pursuant to applicable Law.

### 3. CONDUCT OF AUDITS

3.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

3.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:-

3.2.1 all information requested by the Authority within the permitted scope of the audit; and

3.2.2 reasonable access to any Sites, the Supplier System, Supplier Personnel and to any equipment used (whether exclusively or non-exclusively) in the provision of the Services;

3.3 Where appropriate, the Authority shall discuss the outcome of the audit with the Supplier. In such circumstances, the Supplier shall maintain records of the findings together with details of any corrective action taken as a result of such findings.

3.4 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 3, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### 4. RESPONSE TO AUDITS

4.1 If an audit undertaken pursuant to paragraph 2 identifies that:-

4.1.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;

4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;

- 4.1.3 the Authority has overpaid any Charges, the Supplier shall pay to the Authority:-
- (a) the amount overpaid (excluding any interest on the amount overpaid incurred in accordance with the terms of this Agreement); and
  - (b) the reasonable costs incurred by the Authority in undertaking the audit and the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
- 4.1.4 the Authority has underpaid any Charges, subject to the terms of payment set out in this Agreement, the Authority shall pay to the Supplier the amount underpaid as identified in the audit report and on provision by the Supplier of all reasonable evidence required by the Authority in connection to such underpaid amount (excluding any interest that may have accrued up to the date of payment).

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**SCHEDULE 8.1**

**GOVERNANCE**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

## **I. DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

### **1. MANAGEMENT OF THE SERVICES**

- 1.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed on a day-to-day basis.
- 1.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

### **2. BOARDS**

#### **Establishment and structure of the Boards**

- 2.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
- 2.2 In relation to each Board, the:-
  - 2.2.1 Authority Board Members;
  - 2.2.2 Supplier Board Members;
  - 2.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);
  - 2.2.4 location of the Board's meetings; and
  - 2.2.5 planned start date by which the Board shall be established, shall be as set out in Appendix 1.
- 2.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

#### **Board meetings**

- 2.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:-
  - 2.4.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
  - 2.4.2 that he/she is debriefed by such delegate after the Board Meeting.
- 2.5 A chairperson shall be appointed by the Authority for each Board as identified in Appendix 1. The chairperson shall be responsible for:-
  - 2.5.1 scheduling Board meetings;
  - 2.5.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;

- 2.5.3 chairing the Board meetings;
  - 2.5.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
  - 2.5.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
  - 2.5.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 2.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 2.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.
- 3. ROLE OF THE JOINT IMPLEMENTATION BOARD**
- 3.1 The Joint Implementation Board shall be responsible for the delivery of the implementation of the Services where an Automated Program Interface is required or specified, and shall:-
    - 3.1.1 be accountable to the Commercial Systems Governance Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
    - 3.1.2 report to the Commercial Systems Governance Board on significant issues requiring decision and resolution and on progress against the high level Implementation Plan;
    - 3.1.3 receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
    - 3.1.4 review and report to the Commercial Systems Governance Board on service management, coordination of individual projects and any integration issues;
    - 3.1.5 deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
    - 3.1.6 consider and resolve Disputes (including Disputes as to the cause of a Delay or the provision of the Services) in the first instance and if necessary, escalate the Dispute to the Commercial Systems Governance Board; and
    - 3.1.7 develop operational/supplier relationships and develop and propose the relationship development strategy and ensure the implementation of the same.
  - 3.2 The Joint Implementation Board may meet either separately with each System Supplier or with multiple Supplier representatives as mutually agreed to progress the Implementation Plan.
  - 3.3 The Joint Implementation Board shall remain until the systems are live and handed over to the Authority in accordance with the Implementation Plan, after which point further development will be considered by the Supplier Forum (paragraph 6 below).

**4. ROLE OF THE COMMERCIAL SYSTEMS GOVERNANCE BOARD**

**4.1** The Commercial Systems Governance Board shall:-

- 4.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- 4.1.2 be the point of escalation from the Joint Implementation Board; and
- 4.1.3 carry out the specific obligations attributed to it in paragraph 4.2.

**4.2** The Commercial Systems Governance Board shall:-

- 4.2.1 act as a change control board for the development of the systems;
- 4.2.2 review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- 4.2.3 maintain a log of development change proposals and prioritise them for progressing further and refer them to the Supplier Group to discuss and propose an approach;
- 4.2.4 for proposals agreed by the board to be progressed, obtain suitable costings and prepare business cases for the developments to be funded;
- 4.2.5 obtain the necessary approvals for business cases;
- 4.2.6 review and approve the final specifications for changes, liaising with the Supplier Forum to ensure best practice;
- 4.2.7 ensure that plans are put in place for the development and testing of proposals and that the required internal resource is made available in a timely way to facilitate this;
- 4.2.8 review the performance of the systems, receiving contract performance reports and reports from super-users and/or supplier helpdesks on common issues, and to manage the delivery of any action plans for the rectification of issues and fault;
- 4.2.9 review risk and issues logs for the systems, ensuring these are kept current and that new risks are added and obsolete ones removed;
- 4.2.10 ensure that there are adequate training resources for Super-users and end-users developed by suppliers or internally as required;
- 4.2.11 identify and take a lead for the super-user community across the systems, and ensure that they are trained and skilled to support end-users;
- 4.2.12 liaise with those responsible for the development of ERP systems across the NDA group and work jointly with them to agree developments which affect the functional scope above; and
- 4.2.13 ensure that supplier Service Continuity Plans are maintained up-to-date.

**5. ROLE OF THE SUPPLIER FORUM**

- 5.1 The Supplier Forum shall be accountable to the Commercial Systems Governance Board for oversight of the technology used in the Supplier Solution and interfacing third party solutions, ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.



5.2 The Supplier Forum shall consider:-

- 5.2.1 plans from the Authority for the development of standards, processes and organisational change which affect the systems, and information sharing about developments from the Government Commercial Function or wider policy matters;
- 5.2.2 feedback from the Authority on the operation of processes or interfaces shared across more than one system;
- 5.2.3 plans for the development of the Authority's IT infrastructure and systems as they are relevant to maintaining the interfaces between the Supplier Solution and third party solutions, on a confidential basis, for the purpose of ensuring that any impact on processes or interfaces shared across more than one system is understood and addressed; and
- 5.2.4 the development and delivery of joint action plans arising from the above.

## 6. **CONTRACT MANAGEMENT MECHANISMS**

6.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.

6.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:-

- 6.2.1 the identification and management of risks;
- 6.2.2 the identification and management of issues; and
- 6.2.3 monitoring and controlling project plans.

6.3 The Risk Register shall be updated by the Supplier and submitted for review at Service, System Management and Performance Review Meetings.

## 7. **SERVICE, SYSTEM MANAGEMENT AND PERFORMANCE REVIEW MEETINGS**

7.1 A monthly review meeting shall be held throughout the Term on a date to be agreed between the Parties.

7.2 The meetings shall be attended by the Account Manager of the Supplier and the *Contract Manager* of the Authority and any other persons considered necessary by the Authority or Supplier for the review.

7.3 The review meeting shall consider:

7.3.1 performance against the requirements of the contract including, but not limited to:-

- (a) the Milestones as defined in Schedule 6.1 (*Implementation Plan*),
- (b) Key Performance Indicators as defined in Schedule 2.2 (*Performance Levels*) and risk management; and
- (c) any Service Credits payable by the Supplier to the Authority.

7.3.2 the overall operational performance of the System;

7.3.3 any risks, issues or concerns either of the Parties have with the System, relationship or Agreement.

7.4 The review of performance shall review Supplier performance for the previous Service Period and agree any Service Charges payable without prejudice to Schedule 7.1 (*Charges and Invoicing*).

## APPENDIX 1

## REPRESENTATION AND STRUCTURE OF FORMAL MEETINGS AND BOARDS

## SERVICE, SYSTEM MANAGEMENT AND PERFORMANCE REVIEW MEETINGS

Meeting purpose	Review of Supplier Services delivery including Supplier System performance, delivery of Milestones, risks review and formal assessment of Key Performance Indicators
Authority attendees	Authority Project Victory Manager [Chairperson]  Authority Commercial Systems, Data & Analytics Manager Authority Head of IT Transformation [by exception]  and any other persons considered necessary by the Authority
Supplier attendees	Supplier <i>Account Manager</i>  And any other persons considered necessary by the Supplier
Start date for Board meetings	From Effective Date as defined in Schedule 1 (Terms and Conditions)
Frequency of Board meetings	Monthly
Location of Board meetings	To be agreed between the Parties

## JOINT IMPLEMENTATION BOARD

Board purpose	Review and assurance of interface design, build and test between the Supplier System and third party system(s) as specified by the Authority
Authority members of the Board	Authority Project Manager [Chairperson]  Authority Commercial Systems, Data & Analytics Manager Authority Head of IT Transformation  and any other persons considered necessary by the Authority
Supplier members of the Board	A maximum of two representatives from the Supplier who shall be empowered to make decisions on behalf of the Supplier
Third Party Supplier(s) of the Board	A maximum of two representatives from each third party supplier who shall be empowered to make decisions on behalf of each respective third party supplier
Start date for Board meetings	No sooner than May 2021
Frequency of Board meetings	Monthly or as required

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Location of Board meetings	To be confirmed by the Authority prior to each Board
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**SUPPLIER FORUM (POST IMPLEMENTATION)**

Forum purpose	Review and assurance of the performance of the system interfaces. The Forum will also discuss any forthcoming changes to either the Supplier System and/or third party system(s) that will affect the operation of the any system interface(s) to agree what, if any, development work is required to ensure the interface(s) remains operational
Authority members of the Forum	Authority Project Manager [Chairperson]  Authority Commercial Systems, Data & Analytics Manager  Authority Head of IT Transformation  and any other persons considered necessary by the Authority
Supplier members of the Forum	A maximum of two representatives from the Supplier who shall be empowered to make decisions on behalf of the Supplier
Third Party Supplier(s) members of the Forum	A maximum of two representatives from each third party supplier who shall be empowered to make decisions on behalf of each respective third party supplier
Start date for Board meetings	No sooner than January 2022
Frequency of Board meetings	Quarterly or as required
Location of Board meetings	To be confirmed by the Authority prior to each Board

**COMMERCIAL SYSTEMS GOVERNANCE BOARD**

Authority Members of Project Victory Board	Authority Project Manager [Chairperson]  Authority Commercial Systems, Data & Analytics Manager  NDA Head of IT Transformation  A representative from each of the Commercial teams across the NDA group businesses  and any other persons considered necessary by the Authority
Start Date for Commercial Systems Governance Board meetings	No sooner than January 2022. Until this point, the Board shall be known as the Project Victory Board
Frequency of Commercial Systems Board meetings	Monthly to January 2022 and then as agreed by the Authority
Location of Commercial Systems Board meetings	To be confirmed by the Authority prior to each Board

**SCHEDULE 8.2**

**CHANGE CONTROL PROCEDURE**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

**I. DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

**1. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE**

- 1.1 This Schedule sets out the procedure for dealing with Changes.
- 1.2 Operational Changes shall be processed in accordance with paragraph 8. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 1.3 Document Change shall be processed in accordance with paragraph 9. If either Party is in doubt about whether a change falls within the definition of a Document Change, then it must be processed as a Contract Change.
- 1.4 The Parties shall deal with Contract Change as follows:-
  - 1.4.1 either Party may request a Contract Change (and the Authority may raise a Contract Change on behalf of a Service Recipient) which they shall initiate by issuing a Change Request in accordance with paragraph 3;
  - 1.4.2 unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with paragraph 4 before the Contract Change can be either approved or implemented;
  - 1.4.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 5;
  - 1.4.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in paragraph 6;
  - 1.4.5 save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 5.2; and
  - 1.4.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with paragraph 7.
- 1.5 To the extent that any Contract Change is a Project and/or otherwise requires testing and/or a programme for implementation, then the Parties shall document the requirements for any such testing and/or implementation, including the procedure to be followed, in the relevant Change Authorisation Note, and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify:-
  - 1.5.1 Milestones and/or a Key Milestone;
  - 1.5.2 Milestone Date(s);
  - 1.5.3 any Milestone Achievement Criteria; and
  - 1.5.4 all information related to a Project (if relevant) as required pursuant to paragraph 4.1.8.

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- 1.6 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 5.2, then:-
- 1.6.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
  - 1.6.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 1.7 The Supplier shall:-
- 1.7.1 within ten (10) Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note (including a copy of any documentation related to a Project (including the Project initiation document and Project plan (if applicable)) and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
  - 1.7.2 thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.
2. **COSTS**
- 2.1 Subject to paragraph 1.1:-
- 2.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
  - 2.1.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:-
    - (a) such costs are below £1000;
    - (b) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
    - (c) such costs exceed those in the accepted Impact Assessment Estimate.
- 2.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or development costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*).
- 2.3 The Supplier shall:-
- 2.3.1 (provided that the Change is not a Non-Chargeable Change) only be entitled to add or increase the Charges in respect of the following Changes (with such Changes being "**Chargeable Changes**"):-
    - (a) a Project; and
    - (b) if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and,
- in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

2.3.2 not be entitled to add to or increase the Charges in respect of the following (with such Changes being "**Non-Chargeable Changes**"):-

- (a) any Change expressed in this Agreement as being a Non-Chargeable Change or at the Supplier's cost or expressly stated as not giving rise to any increase in the Charges;
- (b) any Operational Change;
- (c) any Document Change;
- (d) a Change caused by a Change in Law in accordance with Clause 12.2 (Change in Law);
- (e) implementation of a New Release, Update or Upgrade;
- (f) any Change that secures efficiency savings (including by way of reduced running costs) to the extent such savings benefit the Supplier which over the Term meet or exceed the costs of implementing the Change;
- (g) any Change required to remedy adverse audit findings due to a breach by the Supplier of its obligations under this Agreement;
- (h) any Change caused by changes to the Supplier's own standard approaches, guidelines, methodologies or procedures;
- (i) any Change caused by changes (not caused by other Chargeable Changes) to the Supplier Group; Supplier Personnel; Supplier Systems; or Sub-contractors or other resources used or required to be used by the Supplier to provide the Services in accordance with this Agreement;
- (j) any Change in respect of which the costs and expenses associated with the Supplier complying with such Change are already included in the Charges; and
- (k) any Change required as part of any error caused by the Supplier (or is Sub-contractors), any Defect, Default, Rectification Plan, or other Change required by the Supplier to enable the Supplier to comply with its obligations under this Agreement.

This paragraph 2.3.2 is not an exhaustive list of Changes in respect of which no additional or increased Charges shall apply.

2.4 If a Chargeable Change affects any client(s) of the Supplier other than the Authority, any costs that the Supplier incurs that are common to its other client(s) shall be apportioned equitably between the Authority and those other client(s) of the Supplier that are affected by the same or similar Change. Accordingly, the Supplier agrees that there shall be no double charging of such common costs across its clients. The Supplier shall provide, on request, such reasonable information required by the Authority to allow the Authority to verify the apportionment payable by it.

### 3. **CHANGE REQUEST**

3.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Appendix 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

3.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.

3.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

3.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:-

3.4.1 the nature of the request for clarification; and

3.4.2 the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

#### 4. **IMPACT ASSESSMENT**

4.1 Each Impact Assessment shall be completed in good faith and shall include:-

4.1.1 details of the proposed Contract Change including the reason for the Contract Change; and

4.1.2 details of the impact of the proposed Contract Change on the Services and the Supplier's ability to meet its other obligations under this Agreement;

4.1.3 any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:-

(a) the Services Description, the Performance Indicators and/or the Target Performance Levels;

(b) the format of Authority Data, as set out in the Services Description;

(c) the Milestones, Implementation Plan, any agreed Project and any other timetable previously agreed by the Parties;

(d) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure and / or the services or infrastructure provided by an Other Supplier;

4.1.4 details of the cost of implementing the proposed Contract Change (with application of the charging principles and pricing mechanisms set out in Schedule 7.1 (Charges and Invoicing) as appropriate);

4.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

4.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;

4.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law;



4.1.8 where the Contract Change is a Project:-

- (a) a Project initiation document where requested by the Authority;
- (b) a draft project plan that includes:-
  - (i) the proposed governance structure, including all relevant governance forums and/or boards for that Project;
  - (ii) the detail required pursuant to paragraph 4.1.6;
  - (iii) details on any interdependency between the Supplier and the Authority so as to enable the Authority to review the end-to-end plan for delivery, timeframes, sign-off and approvals; and
  - (iv) details on the expected benefits and outcomes of the Project;
- (c) any minimum period of notice required to be given by the Authority in the event it wishes to cancel the proposed Project without cost, and any costs which are required to be paid by the Authority in accordance with this Agreement on cancellation earlier than such period of notice; and
- (d) if the Project contemplates the licensing of third party Intellectual Property Rights, the licence and maintenance fees for such third party Intellectual Property Rights and information as to whether these fees may change during the course of the Project; and

4.1.9 such other information as the Authority may reasonably request in (or in response to) the Change Request.

4.2 Subject to the provisions of paragraph 4.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with paragraph 5 within fifteen (15) Working Days of receiving the Impact Assessment.

4.3 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this paragraph 4.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

4.4 The calculation of costs for the purposes of paragraphs 4.1.4 and 4.1.5 shall:-

- 4.4.1 facilitate the Financial Transparency Objectives;
- 4.4.2 include estimated volumes of each type of resource to be employed and the applicable rate card (including application of the Rate Card and/or Development Charges as set out in Schedule 7.1 (Charges and Invoicing));
- 4.4.3 include full disclosure of any assumptions underlying such Impact Assessment;
- 4.4.4 include evidence of the cost of any assets required for the Change; and
- 4.4.5 include details of any new Sub-contracts necessary to accomplish the Change.

**5. AUTHORITY'S RIGHT OF APPROVAL**

- 5.1 Within twenty (20) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to paragraph 4.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:-
- 5.1.1 approve the proposed Contract Change at the Commercial Systems Governance Board, in which case the Parties shall follow the procedure set out in paragraph 5.2;
  - 5.1.2 in its absolute discretion reject the Contract Change at the Commercial Systems Governance Board, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
  - 5.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to paragraph 4.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within ten (10) Working Days.
- 5.2 If the Authority approves the proposed Contract Change pursuant to paragraph 5.1 and it has not been rejected by the Supplier in accordance with paragraph 6, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 5.3 If the Authority does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

**6. SUPPLIER'S RIGHT OF APPROVAL**

Following an Impact Assessment, if:-

- 6.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:-
  - 6.1.1 materially and adversely affect the risks to the health and safety of any person; and/or
  - 6.1.2 require the Services to be performed in a way that infringes any Law; and/or
- 6.2 the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority in writing of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 3.3.

**7. FAST-TRACK CHANGES**

- 7.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 7.2 The Party requesting a Contract Change shall notify the other Party in accordance with paragraph 3.1 when the Contract Change is a Fast-track Change. The Parties shall use the process set out in paragraphs 3, 4, 5 and 6 but with reduced timescales and such reduced timescales shall be agreed between the Parties in writing.

**8. OPERATIONAL CHANGE PROCEDURE**

- 8.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:-
- 8.1.1 have an impact on the business of the Authority;
  - 8.1.2 adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure or the services or infrastructure of an Other Supplier;
  - 8.1.3 require a change to this Agreement;
  - 8.1.4 have a direct impact on use of the Services; or
  - 8.1.5 involve the Authority in paying any additional Charges or other costs.
- 8.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.
- 8.3 The RFOC shall include the following details:-
- 8.3.1 the proposed Operational Change; and
  - 8.3.2 the time-scale for completion of the Operational Change.
- 8.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 8.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.
- 8.6 The Authority may, at its discretion, make basic Operational Changes itself, such as changes to field names (or additions) and creating or removing users.

**9. DOCUMENT CHANGE PROCEDURE**

- 9.1 The Parties shall maintain the List of Controlled Documents which shall set out the names and version numbers of the Controlled Documents existing from time to time during the Term. A preliminary version of the List of Controlled Documents as at the Effective Date is set out in Appendix 3 and the Parties shall update this document during Implementation in accordance with the procedure set out in paragraph 9.2.
- 9.2 Controlled Documents shall only be effective when approved in writing by the authorised representative of each Party and, unless and until so approved and given an appropriate version number, shall constitute draft documents only.
- 9.3 Upon:

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- 9.3.1 a new version of a Controlled Document being approved (in accordance with paragraph 9.2) and the version number being incremented;
- 9.3.2 a new Controlled Document being approved, where the Parties have agreed to create a new Controlled Document; and
- 9.3.3 the Parties agreeing that an existing Controlled Document should no longer be classified as a Controlled Document,

the Supplier shall update the information in the List of Controlled Documents accordingly.

- 9.4 Where any proposed change to a Controlled Document would, if approved, create an inconsistency with any other provisions within this Agreement or would require a Change to another part of the Agreement such proposed change shall not be effective (even if approved within the Controlled Document) unless and until the Parties have also approved an associated change to the relevant part of the Agreement using the Change Control Procedure applicable for a Contract Change.

## 10. **COMMUNICATIONS**

For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 4.1 shall apply to a Change Communication as if it were a notice.

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APPENDIX 1

CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED ( <i>OPTIONAL FIELD</i> ):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

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APPENDIX 2

CHANGE AUTHORISATION NOTE

CR NO.:		TITLE:		TYPE OF CHANGE:	
CONTRACT:			REQUIRED BY DATE:		
ACTION:		NAME:		DATE:	
[KEY MILESTONE DATE: [if any]]					
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:					
[DETAILED DESCRIPTION OF ANY PROJECT [if any] INCLUDING A PROJECT INITIATION DOCUMENT, PROJECT PLAN AND OTHER INFORMATION REQUIRED IN ACCORDANCE WITH PARAGRAPH 1.5 OF SCHEDULE 8.2 (CONTRACT CHANGE PROCEDURE)]					
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:					
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):					
SIGNED ON BEHALF OF THE AUTHORITY:			SIGNED ON BEHALF OF THE SUPPLIER:		
Signature:	.....		Signature:	.....	
Name:	.....		Name:	.....	
Position:	.....		Position:	.....	
Date:	.....		Date:	.....	

**APPENDIX 3****LIST OF CONTROLLED DOCUMENTS AS AT THE EFFECTIVE DATE**

<b>Controlled Document</b>	<b>Cited</b>	<b>Version Number</b>
List of Controlled Documents	Appendix 3 of Schedule 8.2 (Change Control Procedure)	1.0
Implementation Plan	Appendix 1 of Schedule 6.1 (Implementation)	1.0
Exit Plan	Appendix 1 of Schedule 8.5 (Exit Management)	1.0
Service Continuity Plan	Appendix 1 of Part 1 of Schedule 8.6 (Service Continuity Plan)	1.0

**SCHEDULE 8.3**

**DISPUTE RESOLUTION PROCEDURE**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version



1. **DEFINITIONS**

1.1 In this Schedule, the definitions set out in Schedule 1 shall apply.

2. **DISPUTE NOTICES**

2.1 If a Dispute arises then:-

2.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:-

2.2.1 shall set out:-

(a) the material particulars of the Dispute;

(b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

2.2.2 may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to paragraph 2.2.2, then:-

2.3.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

2.3.2 if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of paragraph 9 shall apply.

2.4 Subject to paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:-

2.4.1 first by commercial negotiation (as prescribed in paragraph 4);

2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in paragraph 5); and

2.4.3 lastly by recourse to litigation (in accordance with Clause 42 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.

- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under paragraph 9.

### 3. **EXPEDITED DISPUTE TIMETABLE**

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including, by way of example, where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:-
- 3.2.1 in paragraph 4.2.3), ten (10) Working Days;
- 3.2.2 in paragraph 5.2, ten (10) Working Days; and
- 3.2.3 in paragraph 6.2, five (5) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (2) Working Days in the case of paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

### 4. **COMMERCIAL NEGOTIATION**

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Group Commercial Director and the Supplier's Managing Director.
- 4.2 If:-
- 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- 4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this paragraph 4; or
- 4.2.3 the Parties have not settled the Dispute in accordance with paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation in accordance with paragraph 5 (a "**Mediation Notice**").

**5. MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

**6. EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any:
- 6.1.1 aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT nature; or
  - 6.1.2 accounting or financing matters,
- and the Dispute has not been resolved by commercial negotiation in accordance with paragraph 4 or, if applicable, mediation in accordance with paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an Expert for determination.
- 6.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to paragraph 6.1, or if the person appointed is unable or unwilling to act, the Expert shall be appointed:-
- 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the [President of the British Computer Society] (or any other association that has replaced the British Computer Society);
  - 6.2.2 if the Dispute relates to a matter of an accounting or financial technical nature, on the instructions of the [President of the Institute of Chartered Accountants of England and Wales]; or
  - 6.2.3 if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:-
    - (a) an appropriate body agreed between the Parties; or
    - (b) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the [President of the Law Society] on application by either Party.
- 6.3 The Expert shall act on the following basis:-
- 6.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

- 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. **[NOT USED]**

8. **URGENT RELIEF**

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:-

- 8.1 for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 8.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9. **MULTI-PARTY DISPUTES**

- 9.1 All Multi--Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the "**Multi--Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi--Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi--Party Dispute and specifies the Related Third Parties which are to be involved in the Multi--Party Dispute Resolution Procedure, such notice a "**Multi--Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:-
  - 9.4.1 a Multi--Party Dispute, in which case the Authority shall serve a Multi--Party Procedure Initiation Notice on the Supplier; or
  - 9.4.2 not a Multi--Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi--Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

- 9.6 Following service of a Multi--Party Procedure Initiation Notice a Multi--Party Dispute shall be dealt with by a board (in relation to such Multi--Party Dispute, the "**Multi--Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi--Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi--Party Dispute:-
- 9.6.1 the Authority;
  - 9.6.2 the Supplier;
  - 9.6.3 each Related Third Party involved in the Multi-Party Dispute;
  - 9.6.4 (to the extent different from paragraph 9.6.3 above) any Service Recipient affected by the Multi-Party Dispute; and
  - 9.6.5 any other representatives of any of the Parties, any Related Third Parties or Service Recipients whom the Authority considers necessary,
- (together "**Multi--Party Dispute Representatives**").
- 9.7 The Parties agree that the Multi--Party Dispute Resolution Board shall seek to resolve the relevant Multi--Party Dispute in accordance with the following principles and procedures:-
- 9.7.1 the Parties shall procure that their Multi--Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi--Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi--Party Dispute Resolution Board in respect of the Multi--Party Dispute;
  - 9.7.2 the Multi--Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi--Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi--Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
  - 9.7.3 in seeking to resolve or settle any Multi--Party Dispute, the members of the Multi--Party Dispute Resolution Board shall have regard to the principle that a Multi--Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi--Party Dispute.
- 9.8 If a Multi--Party Dispute is not resolved between the Parties and all Related Third Parties within twenty-five (25) Working Days of the issue of the Multi--Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:-
- 9.8.1 either Party may serve a Mediation Notice in respect of the Multi--Party Dispute in which case paragraph 5 shall apply; and/or
  - 9.8.2 either Party may request that the Multi--Party Dispute is referred to an Expert in which case paragraph 6 shall apply,
- and in each case references to the "**Supplier**" or the "**Parties**" in such provisions shall include a reference to all Related Third Parties.

**SCHEDULE 8.4**

**REPORTS AND RECORDS PROVISIONS**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

I. **DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.-

1. **REPORTS**

The Authority may require any or all of the following reports:-

- 1.1 delay reports;
- 1.2 reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- 1.3 reports which the Supplier is required to supply as part of the Management Information;
- 1.4 annual reports on the Insurances;
- 1.5 security reports; and
- 1.6 Force Majeure Event reports.

2. **RECORDS**

- 2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in paragraph 1 and Appendix 1 (together "**Records**"):-
  - 2.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
  - 2.1.2 in chronological order;
  - 2.1.3 in a form that is capable of audit; and
  - 2.1.4 at its own expense.
- 2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 2.4 The Supplier shall, during the Term and for a period of at least seven (7) years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this Agreement.
- 2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:-
  - 2.6.1 as soon as they are available, and in any event within sixty (60) Working Days after the end of the first six (6) months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and

- 2.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than one hundred and thirty (130) Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.



**TRANSPARENCY REPORTS – [NOT USED]**

## APPENDIX 2

### RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:-

1. this Agreement, its Schedules and all amendments to such documents;
2. all other documents which this Agreement expressly requires to be prepared;
3. documents prepared by the Supplier in support of Performance Levels;
4. records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel;
5. notices, reports and other documentation submitted by any Expert;
6. all operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment;
7. documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event;
8. all formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services;
9. all certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services;
10. documents prepared by the Supplier in support of claims for the Charges;
11. documents submitted by the Supplier pursuant to the Change Control Procedure;
12. documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure;
13. documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest;
14. invoices and records related to VAT sought to be recovered by the Supplier;
15. financial records, including audited and un-audited accounts of the Guarantor and the Supplier;
16. records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents;
17. all documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them;
18. all journals and audit trail data referred to in **Schedule 2.4 (Security Management Plan)**; and
19. all other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

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**APPENDIX 3**

**RECORDS TO UPLOAD TO VIRTUAL LIBRARY – [NOT USED]**

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**APPENDIX 4**

**SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE – [NOT USED]**

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**SCHEDULE 8.5**

**EXIT MANAGEMENT**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

## **I. DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 (*Definitions*) shall apply.

### **1. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

#### **1.1 During the Term, the Supplier shall:-**

##### **1.1.1 Within three months of the Effective Date, create and then subsequently maintain a register of all:-**

##### **(a) Assets, detailing their:-**

- (i) make, model and asset number;
- (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (iii) Net Book Value;
- (iv) condition and physical location; and
- (v) use (including technical specifications);

##### **(b) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;**

##### **1.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority, any Service Recipient and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;**

##### **1.1.3 agree the format of the Register with the Authority as part of the process of agreeing the Exit Plan; and**

##### **1.1.4 at all times keep the Register up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.**

#### **1.2 The Supplier shall ensure that all Exclusive Assets listed in the Register are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.**

#### **1.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Supplier's Exit Manager shall be responsible for maintaining the Exit Plan and ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.**

### **2. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

#### **2.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to**

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facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:-

- 2.1.1 details of the Service(s);
  - 2.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Register;
  - 2.1.3 an inventory of Authority Data in the Supplier's possession or control;
  - 2.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 2.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 2.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
  - 2.1.7 such other material and information as the Authority shall reasonably require, (together, the "**Exit Information**").
- 2.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to any Service Recipient, an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 2.3 The Supplier shall:-
- 2.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of the provision of any Services and shall consult with the Authority regarding such proposed material changes; and
  - 2.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
- 2.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.
- 2.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:-
- 2.5.1 prepare an informed offer for those Services; and
  - 2.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
3. **EXIT PLAN**
- 3.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Authority an Exit Plan which:-
- 3.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority, any Service Recipient and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
  - 3.1.2 complies with the requirements set out in paragraph 4.2; and

- 3.1.3 is otherwise reasonably satisfactory to the Authority.
- 3.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.3 The Exit Plan shall set out, as a minimum:-
- 3.3.1 how the Exit Information is obtained;
  - 3.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
  - 3.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
  - 3.3.4 the management structure to be employed during both transfer and cessation of the provision of the Services in an Ordinary Exit and an Emergency Exit;
  - 3.3.5 the management structure to be employed during the Termination Assistance Period;
  - 3.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - 3.3.7 how the provision of the Services will transfer to the Replacement Supplier, a Service Recipient and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's or any Service Recipient's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
  - 3.3.8 the scope of the Termination Services that may be required for the benefit of the Authority and/or any Service Recipient (including such of the services set out in Appendix 1 as are applicable);
  - 3.3.9 a timetable and critical issues for providing the Termination Services;
  - 3.3.10 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
  - 3.3.11 how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - 3.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*) and all required submissions with respect to the same;
  - 3.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier, any Service Recipient and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the provision of the Services during the Termination Assistance Period; and
  - 3.3.14 any other element that the Authority reasonably requires to be addressed.
- 3.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority, any Service Recipients and/or its Replacement Supplier may be phased, such that certain of the provision



of the Services are handed over before others. Where this is the case, it must be included in the Exit Plan.

- 3.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within fourteen (14) days of such request, to reflect any changes in the provision of the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### **Finalisation of the Exit Plan**

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

#### **4. TERMINATION SERVICES**

##### **Notification of Requirements for Termination Services**

- 4.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the date of Partial Termination, termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:-
- 4.1.1 the date from which Termination Services are required;
  - 4.1.2 the nature of the Termination Services required; and
  - 4.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty four (24) months after the date that the Supplier ceases to provide the relevant terminated Services.
- 4.2 The Authority shall have:-
- 4.2.1 an option to extend the period of assistance beyond the period specified in the relevant Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the terminated Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
  - 4.2.2 the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.

### **Termination Assistance Period**

- 4.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:-
- 4.3.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 5.1, provide the Termination Services;
  - 4.3.2 co-operate with the Service Recipients and any Replacement Supplier;
  - 4.3.3 in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the provision of the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the provision of the Services to the Authority, any Service Recipient and/or its Replacement Supplier;
  - 4.3.4 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 5.3.2 without additional costs to the Authority;
  - 4.3.5 provide the Services and the Termination Services at no detriment to the Target Performance Levels, and continue to participate in the governance arrangements under Schedule 8.1 (*Governance*), save to the extent that the Parties agree otherwise in accordance with paragraph 5.5; and
  - 4.3.6 at the Authority's request and on reasonable notice, deliver up--to--date Registers to the Authority.
- 4.4 Without prejudice to the Supplier's obligations under paragraph 5.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 5.3.2 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 4.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the provision of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

### **Termination Obligations**

- 4.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination or expiry of this Agreement.
- 4.7 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance and/or delivery of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:-
- 4.7.1 cease to use the Authority Data;
  - 4.7.2 comply with any directions given by the Authority relating to the Authority Data;
  - 4.7.3 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority) including all backups of the Authority Data;

- 4.7.4 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- 4.7.5 securely destroy or confidentially dispose of any information or documentation to which it is not entitled and which is not required to be returned to the Authority (in compliance with Law);
- 4.7.6 provide independently verifiable evidence that all Authority Data has been returned or irretrievably destroyed or disposed of;
- 4.7.7 only use a means of disposal or destruction previously agreed with the Authority in writing;
- 4.7.8 return to the Authority such of the following as is in the Supplier's possession or control:-
  - (a) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
  - (b) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
  - (c) any parts of the IT Environment and any other equipment which belongs to the Authority; and
  - (d) any items that have been on--charged to the Authority, such as consumables;
- 4.7.9 vacate any Authority Premises unless access is required to continue to deliver the Services (or part thereof) and is approved in writing by the Authority; and
- 4.7.10 provide access during normal working hours or where otherwise agreed in writing to the Authority, any Service Recipient and/or the Replacement Supplier for up to twelve (12) months after the Partial Termination, expiry or termination of this Agreement to:-
  - (a) such information relating to the provision of the Services as remains in the possession or control of the Supplier; and
  - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph 4.7.10(b).
- 4.8 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance and/or delivery of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 4.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the provision of the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

5. **ASSETS, SUB-CONTRACTS AND SOFTWARE**

5.1 Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:-

5.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services, the Charges, or the delivery of the agreed Exit Plan;

5.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

5.1.3 terminate, enter into or vary any licence for software in connection with the provision of the Services.

5.2 Within twenty (20) Working Days of receipt of the up-to-date Register provided by the Supplier, the Authority shall provide written notice to the Supplier setting out:-

5.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority, any Service Recipient and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");

(a) which, if any, of:-

(i) the Exclusive Assets that are not Transferable Assets; and

(ii) the Non-Exclusive Assets,

(b) the Authority, any Service Recipient and/or the Replacement Supplier requires the continued use of; and

(c) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority, any Service Recipient and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority, any Service Recipient and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority, any Service Recipient and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority, any Service Recipient and/or its Replacement Supplier requires to provide the Services or Replacement Services.

5.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority, any Service Recipient and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:-

5.3.1 a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

5.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

5.4 Risk in the Transferring Assets shall pass to the Authority, any Service Recipient or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority, any Service Recipient or the Replacement Supplier (as appropriate) on payment for the same.

- 5.5 Where the Supplier is notified in accordance with paragraph 5.2 that the Authority, any Service Recipient and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:-
- 5.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority, any Service Recipient and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - 5.5.2 procure a suitable alternative to such assets and the Authority, any Service Recipient or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 5.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority, any Service Recipient and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 5.7 The Authority shall:-
- 5.7.1 at the Authority's option, accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 5.7.2 once a Transferring Contract is novated or assigned to the Authority, any Service Recipient and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 5.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority, any Service Recipient and/or the Replacement Supplier has been effected.
- 5.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (any Service Recipient and/or Replacement Supplier) pursuant to paragraph 5.6 both:-
- 5.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
  - 5.9.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 and/or Clause 17.
6. **SUPPLIER PERSONNEL**
- 6.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 6.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 6.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority, any Service Recipient and/or the Replacement Supplier.

- 6.4 The Supplier shall immediately notify the Authority of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 6.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority, any Service Recipient and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

**7. CHARGES**

- 7.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 7.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with paragraph 4.2:-
- 7.2.1 where more than six (6) months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
- 7.2.2 where less than six (6) months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 7.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 7.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

**8. APPORTIONMENTS**

- 8.1 All outgoings and expenses (including any remuneration due, subject to the provisions of Schedule 9.1 (*Staff Transfer*)) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts which are to be transferred in accordance with and subject to the provision of paragraph 5, shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:-
- 8.1.1 the amounts shall be annualised and divided by three hundred and sixty-five (365) to reach a daily rate;
- 8.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 8.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 8.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 8.1 as soon as reasonably practicable.

## APPENDIX 1

### SCOPE OF THE TERMINATION SERVICES

1. The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:-
  - 1.1 ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - 1.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 1.3 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - 1.4 delivering to the Authority the existing systems support profiles, monitoring or system logs, incident and problem tracking together with associated resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - 1.5 providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - 1.6 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - 1.7 providing the Authority with any problem logs in the format agreed which have not previously been provided to the Authority;
  - 1.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of twelve (12) months after the Termination Assistance Period;
  - 1.9 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the provision of the Services after the Termination Assistance Period;
  - 1.10 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority, any Service Recipient and/or the Replacement Supplier;
  - 1.11 providing assistance and expertise as necessary to support the Authority, any Service Recipient and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
  - 1.12 provide all necessary support, equipment, tools, and Software such as data migration services and/or APIs, in order to enable and support the execution of the migration plan by the Authority, any Service Recipient and/or Replacement Supplier;
  - 1.13 making available to the Authority, any Service Recipient and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry of this Agreement;
  - 1.14 assisting in establishing naming conventions for any new production site;

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- 1.15 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.16 agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.17 delivering copies of the production databases (with content listings) to the Authority's, any Service Recipient and/or the Replacement Suppliers operations staff (on appropriate media) as reasonably requested by the Authority;
- 1.18 assisting with the loading, testing and implementation of the production databases;
- 1.19 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- 1.20 in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous twelve months;
- 1.21 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that the provision of these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.22 providing an information pack listing and describing the Services as configured, for use by the Authority in the procurement of the Replacement Services;
- 1.23 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the provision of the Services;
- 1.24 agreeing with the Authority, any Service Recipient and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority, any Service Recipient and/or the Replacement Supplier;
- 1.25 providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the provision of the Services to the Authority, any Service Recipient and/or the Replacement Supplier:-
  - 1.25.1 to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - 1.25.2 following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors;
- 1.26 knowledge transfer services, including:-
  - 1.26.1 transferring all training material and providing appropriate training to those Authority, any Service Recipient and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - 1.26.2 providing for transfer to the Authority, any Service Recipient and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - 1.26.3 providing the Authority, any Service Recipient and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been



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involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

- 1.27 The Supplier shall:-
- 1.27.1 provide a documented plan relating to the training matters referred to in paragraph 1.13 for agreement by the Authority at the time of termination or expiry of this Agreement;
  - 1.27.2 co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1.16, providing skills and expertise of a suitable standard; and
  - 1.27.3 fully co-operate in the execution of the Authority Data migration plan agreed pursuant to paragraph 1.24, providing skills and expertise of a reasonably acceptable standard.
- 1.28 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
- 1.29 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to paragraph 1.25 shall include:-
- 1.29.1 copies of up-to-date procedures and operations manuals;
  - 1.29.2 product information and configuration details;
  - 1.29.3 agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
  - 1.29.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
  - 1.29.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
  - 1.29.6 details of physical and logical security processes and tools which will be available to the Authority; and
  - 1.29.7 any relevant interface information.
- 1.30 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority and/or Service Recipient access, during normal business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:-
- 1.30.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this paragraph 1.30 shall:-
    - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
    - (b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
  - 1.30.2 the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

**SCHEDULE 8.6**

**SERVICE CONTINUITY PLAN**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

## PART 1

### SERVICE CONTINUITY PLAN

#### DEFINITIONS

In this Schedule, the definitions set out in Schedule 1 shall apply.

#### 1. SERVICE CONTINUITY PLAN

1.1 The initial version of the Service Continuity Plan as at the Effective Date is set out at Appendix 1 of Part 1 to this Schedule 8.6 (*Service Continuity Plan*). The Service Continuity Plan details the processes and arrangements that the Supplier shall follow to:-

1.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any subcontractor and/or any Supplier Group member); and

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

1.2 The Service Continuity Plan shall:-

1.2.1 be divided into four parts:-

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

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

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

(d) Part D which shall relate to an Insolvency Event of the Supplier any subcontractors and/or any Supplier Group member (the "**Insolvency Continuity Plan**"); and

1.2.2 unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 2, 3, 4 and 5. Where there is inconsistency in the plan versus what is required in this Schedule, the Schedule shall take precedence.

#### 2. SERVICE CONTINUITY PLAN:- PART A - GENERAL PRINCIPLES AND REQUIREMENTS

2.1 Part A of the Service Continuity Plan shall:-

2.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;

2.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the provision of the Services and any services provided to the Authority or any Service Recipient by a Related Service Provider;

2.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;

2.1.4 detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the

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Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;

- 2.1.5 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 Authority;
- 2.1.6 contain a risk analysis, including:-
  - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (b) identification of any potential single points of failure within the provision of the Services and processes for managing the risks arising therefrom and the steps to be taken by the Supplier to ensure that there are no such single points of failure;
  - (c) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
  - (d) identification of risks arising from an Insolvency Event of the Supplier any subcontractors and/or Supplier Group member; and
  - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 2.1.7 provide for documentation of processes, including business processes, and procedures;
- 2.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- 2.1.9 identify the procedures for reverting to "normal service";
- 2.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- 2.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- 2.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

## 2.2 The Service Continuity Plan shall be designed so as to ensure that:-

- 2.2.1 the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- 2.2.2 the adverse impact of any Disaster, service failure, pandemic (including the impacts of COVID-19 (or similar)), an Insolvency Event of the Supplier and/or any Supplier Group member, or disruption on the operations of the Authority and the Service Recipients, is minimal as far as reasonably possible;
- 2.2.3 it complies with the relevant provisions of ISO/IEC27002 and all other industry standards from time to time in force; and
- 2.2.4 there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

- 2.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the provision of the Services, to the business processes facilitated by and the business operations supported by the provision by the Supplier of the Services, and/or changes to the Supplier Group structure.
- 2.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.
3. **SERVICE CONTINUITY PLAN:- PART B - BUSINESS CONTINUITY PRINCIPLES AND CONTENTS**
- 3.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision by the Supplier of the Services and remain supported and to ensure continuity of the business operations supported by the provision of the Services including, unless the Authority expressly states otherwise in writing:-
- 3.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision by the Supplier of the Services; and
- 3.1.2 the steps to be taken by the Supplier upon resumption of the provision by the Supplier 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.
- 3.2 The Business Continuity Plan shall:-
- 3.2.1 address the various possible levels of failures of or disruptions to the provision by the Supplier of the Services;
- 3.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the provision by the Supplier of the Services (such services and steps, the "**Business Continuity Services**");
- 3.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- 3.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.
4. **SERVICE CONTINUITY PLAN:- PART C - DISASTER RECOVERY PRINCIPLES AND CONTENT**
- 4.1 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 Authority and the Service Recipients supported by the provision by the Supplier of the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 4.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 4.3 The Disaster Recovery Plan shall include the following:-
- 4.3.1 the technical design and build specification of the Disaster Recovery System;
- 4.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including the following:-
- (a) data centre and disaster recovery site audits;

- (b) backup methodology and details of the Supplier's approach to data back-up and data verification;
  - (c) identification of all potential disaster scenarios;
  - (d) risk analysis;
  - (e) documentation of processes and procedures;
  - (f) hardware configuration details;
  - (g) network planning including details of all relevant data networks and communication links;
  - (h) invocation rules;
  - (i) Service recovery procedures; and
  - (j) steps to be taken upon resumption of the provision of the Services to address any prevailing effect of the failure or disruption of the provision of the Services;
- 4.3.3 any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 4.3.4 details of how the Supplier shall ensure compliance with security standards set out in Schedule 2.4 (Security Management) ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 4.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 4.3.6 testing and management arrangements.

**5. SERVICE CONTINUITY PLAN: PART D - INSOLVENCY CONTINUITY PLAN PRINCIPLES AND CONTENTS**

- 5.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any subcontractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Insolvency Continuity Plan shall include the following:-
- 5.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, subcontractor personnel and Supplier Group member personnel;
  - 5.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, subcontractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the provision of the Services;
  - 5.2.3 plans to manage and mitigate identified risks;
  - 5.2.4 details of the roles and responsibilities of the Supplier, subcontractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the provision of the Services;

- 5.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, subcontractors and Supplier Group members); and
- 5.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

6. **REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN**

6.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):-

- 6.1.1 on a regular basis and as a minimum once every six (6) months;
- 6.1.2 within three (3) calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to paragraph 8.2;
- 6.1.3 within ten (10) Working Days of a Financial Distress Event;
- 6.1.4 within thirty (30) calendar days of a Corporate Change Event;
- 6.1.5 within two (2) days of a formal announcement from a UK regulator or other government authority that a pandemic (including COVID-19 (or similar)) may impact the Services; and
- 6.1.6 where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.1 to 6.1.4) by notifying the Supplier to such effect in writing, whereupon the Supplier shall promptly conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

6.2 Each review of the Service Continuity Plan pursuant to paragraph 6.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the provision of the Services or any underlying business processes and operations facilitated by or supported by the provision of the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:-

- 6.2.1 the findings of the review;
- 6.2.2 any changes in the risk profile associated with the provision of the Services; and
- 6.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity 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.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:-

- 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.

6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:-

6.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within ten (10) Working Days of the date of the Authority's notice of rejection. The provisions of paragraph 6.3 and this paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals up to a maximum of two (2) times (unless otherwise agreed in writing by the Authority), provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time (or if the procedure set out in paragraph 6.3 and this paragraph 6.4 has been exhausted in accordance the terms of this paragraph 6.4.2).

6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the provision of the Services.

## **7. TESTING OF THE SERVICE CONTINUITY PLAN**

7.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the provision of 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 Service Continuity Plan.

7.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test (as agreed in advance with the Authority) shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

7.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.

7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.

7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:-

7.5.1 the outcome of the test;

7.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and



7.5.3 the Supplier's proposals for remedying any such failures.

- 7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the provision of the Services or as otherwise reasonably requested by the Authority.

**8. INVOCATION OF THE SERVICE CONTINUITY PLAN**

- 8.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan (and shall inform the Authority promptly of such invocation). In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 8.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:-
- 8.2.1 where an Insolvency Event of a subcontractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
- 8.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

## APPENDIX 1

### Service Continuity Plan

#### Atamis – Business Continuity Plan



Atamis - Business  
Continuity Plan v4.4.pdf

#### Atamis – Information Security Policy



Atamis - Information  
Security Policy v2.0.pdf

## PART 2

### CORPORATE RESOLUTION PLANNING

#### 1. SERVICE STATUS AND SUPPLIER STATUS

- 1.1 This Agreement is a Critical Service Contract.

#### 2. PROVISION OF CORPORATE RESOLUTION PLANNING INFORMATION

- 2.1 The Supplier shall provide to the Relevant Authority the CRP Information within thirty (30) calendar days of the date of the Relevant Authority's request.

- 2.2 The Supplier shall ensure that the CRP Information:-

2.2.1 is full, comprehensive, accurate and up to date;

2.2.2 is split into two parts:-

(a) Group Structure Information and Resolution Commentary; and

(b) UK Public Service / CNI Contract Information

and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

2.2.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority to understand and consider the information for approval;

2.2.4 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

2.2.5 complies with the requirements set out at Appendix 1 (Group Structure Information and Resolution Commentary) and Appendix 2 (UK Public Sector / CNI Contract Information) respectively.

- 2.3 Following receipt by the Relevant Authority of the CRP Information pursuant to paragraph 2.1 and if requested by the Relevant Authority (acting reasonably), the Supplier and the Relevant Authority shall meet to discuss in good faith the contents of the CRP Information and the impacts (if any) on the Services.

#### 3. TERMINATION RIGHTS

- 3.1 The Authority shall be entitled to terminate this Agreement if the Supplier is required to provide CRP Information under paragraph 2 of this Part 2:-

3.1.1 the Supplier fails to provide the CRP Information within thirty (30) calendar days of a request from the Authority.

## **APPENDIX 1**

### **GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY**

1. The Supplier shall:-
  - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix 2 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
  - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
  - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix 2 and the dependencies between each.

## **APPENDIX 2**

### **UK PUBLIC SECTOR / CNI CONTRACT INFORMATION**

1. The Supplier shall:-
  - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:-
    - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms--length bodies and agencies, non--departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
    - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1 of this Appendix 2 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
    - 1.1.3 involve or could reasonably be considered to involve CNI.

OFFICIAL

**SCHEDULE 8.7**

**CONDUCT OF CLAIMS**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version

1. **INDEMNITIES**

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the "**Indemnifier**"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "**Beneficiary**").
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to paragraph 1.3:-
- 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
- 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:-
- 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 1.3;
- 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of paragraph 1.4.

2. **SENSITIVE CLAIMS**

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3. **RECOVERY OF SUMS**

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:-

3.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

3.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4. **MITIGATION**

Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

OFFICIAL

**SCHEDULE 9.1**

**STAFF TRANSFER**

<b>Issue No:</b>	<b>Summary of Change:</b>
v1	Initial version



**1. DEFINITIONS**

In this Schedule, the definitions set out in Schedule 1 shall apply.-

**2. INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier Replacement Supplier or Replacement Sub-contractor, as the case may be.

**PART A [NOT USED]**

**PART B [NOT USED]**

**PART C**

**NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

**3. PROCEDURE IN THE EVENT OF TRANSFER**

3.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

3.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:-

3.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and

3.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

3.3 If an offer referred to in paragraph 3.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

3.4 If by the end of the fifteenth (15) Working Day period specified in paragraph 3.2.2:-

3.4.1 no such offer of employment has been made;

3.4.2 such offer has been made but not accepted; or

3.4.3 the situation has not otherwise been resolved,

the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

**4. INDEMNITIES**

- 4.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of paragraphs 3.1 to 3.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 3.1, the Authority shall:-
- 4.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in paragraph 3.2 made pursuant to the provisions of paragraph 3.4 provided that the Supplier takes all reasonable steps to minimise any such Employee Liabilities; and
- 4.1.2 procure that the Former Supplier indemnifies the Supplier against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 4.2 If any such person as is described in paragraph 3.2 is neither re-employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the fifteenth (15) Working Day period referred to in paragraph 3.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 4.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to paragraph 4, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 4.4 The indemnities in paragraph 4.1:-
- 4.4.1 shall not apply to:-
- (a) any claim for:-
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 4.4.2 shall apply only where the notification referred to in paragraph 3.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

**PART D [NOT USED]**

**PART E**

**EMPLOYMENT EXIT PROVISIONS**

**5. PRE-SERVICE TRANSFER OBLIGATIONS**

5.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:-

- 5.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- 5.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- 5.1.3 the date which is 12 months before the end of the Term; and
- 5.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with Data Protection law, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

5.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:-

- 5.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- 5.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

5.3 The Authority shall be permitted to use and disclose information provided by the Supplier under paragraphs 3.1 and 3.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

5.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to paragraphs 3.1 and 3.2 shall be true and accurate in all material respects at the time of providing the information.

5.5 From the date of the earliest event referred to in paragraph 5.1.1, 5.1.2 and 5.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):-

- 5.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 5.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- 5.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

- 5.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 5.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 5.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 5.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:-

- 5.6.1 the numbers of employees engaged in providing the Services;
- 5.6.2 the percentage of time spent by each employee engaged in providing the Services; and
- 5.6.3 a description of the nature of the work undertaken by each employee by location.

- 5.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:-

- 5.7.1 the most recent month's copy pay slip data;
- 5.7.2 details of cumulative pay for tax and pension purposes;
- 5.7.3 details of cumulative tax paid;
- 5.7.4 tax code;
- 5.7.5 details of any voluntary deductions from pay; and
- 5.7.6 bank/building society account details for payroll purposes.

## 6. **EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 6.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied through

operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

- 6.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 6.3 Subject to paragraph 3.1, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:-
  - 6.3.1 any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
  - 6.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:-
    - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
  - 6.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - 6.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:-
    - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
    - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
  - 6.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance

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contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

6.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

6.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

6.4 The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:-

6.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

6.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

6.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:-

6.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

6.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

6.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

6.7 If after the fifteenth (15) Working Day period specified in paragraph 5.1.1 has elapsed:-

6.7.1 no such offer of employment has been made;

6.7.2 such offer has been made but not accepted; or

6.7.3 the situation has not otherwise been resolved,

the Authority shall advise the Replacement Supplier and/or Replacement Subcontractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

- 6.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of paragraph 3.1, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 3.1 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 6.9 The indemnity in paragraph 4.1:-
- 6.9.1 shall not apply to:-
- (a) any claim for:-
    - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
  - (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- 6.9.2 shall apply only where the notification referred to in paragraph 5.1.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .
- 6.10 If any such person as is described in paragraph 3.1 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in paragraphs 3.1 to 3.2, such person shall be treated as a Transferring Supplier Employee.
- 6.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:-
- 6.11.1 the Supplier and/or any Sub-contractor; and
  - 6.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 6.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to

carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 6.13 Subject to paragraph 6.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Sub-contractors against any Employee Liabilities arising from or as a result of:-
- 6.13.1 any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee ;
  - 6.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:-
    - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
    - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
  - 6.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
  - 6.13.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
  - 6.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
  - 6.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:-
    - (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
      - (i) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment



Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- (ii) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (iii) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 6.14 The indemnities in paragraph 6.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.