

Confidential and Subject to Contract

**DRAFT CONTRACT**  
**Between**  
**Crown Commercial Service**  
**and**  
**[Supplier]**  
**for the provision of**  
**[Crown Travel Booking and Management Services]**  
**[Crown Venue and Management Services]**

**[Drafting Note: Contracts 1 to 3 involve travel booking and management services and Contract 4 involves venue management services. The title of the contract will be tailored for each contract as required prior to signature.]**

Version: 1

Contract ref: [ ]

eSourcing ref: (Optional)

Common Procurement Vocabulary (CPV):

Start Date: [ ]

Expiry Date: [ ]

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CCS – Contract for the provision of [Crown Travel and Management Services] [Crown Venue Management Services]

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## SCHEDULES:

**[Drafting Note: The list of Schedules is set out below with further Drafting Notes to explain which Schedules apply at the Contract level and/or the Enabling Agreement level.]**

<b>CONTRACT</b> <b>(BETWEEN THE CLIENT AND THE SUPPLIER)</b>
<b>Contract - Schedules:</b>  <b>[Drafting Note: All of the Schedules below (1 to 18) will be attached the Contract. However, Schedules 1 to 6 apply between the Enabling Authorities and the Supplier and they will be incorporated by reference in the Enabling Agreement in order to draw-down each of those Schedules into each Enabling Agreement. For the avoidance of doubt, Schedules 7 to 18 will not be incorporated into the Enabling Agreement and apply between the Client and the Supplier. Schedule 1 (Definitions) applies to both the Contract and the Enabling Agreement, as more particularly described in the Enabling Agreement.]</b>
Front end Terms and Conditions of the Contract
Schedule 1 – Definitions
Schedule 2 – Services
Schedule 3 – Service Levels and Service Credits
Schedule 4 – Pricing & Invoicing
Schedule 5 – Security Requirements and Plan
Schedule 6 – Staff Transfer & Pensions
<b>Contract - Schedules:</b>  <b>[Drafting Note: All the Schedules below (7 to 18) will apply at the Contract level only between the Client and the Supplier.]</b>
Schedule 7 - Implementation Schedule
Schedule 8– Guarantee
Schedule 9 – Key Performance Indicators
Schedule 10 – Value for money
Schedule 11– Annual Self-Audit Certificate

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Schedule 12 – Commercially Sensitive Information
Schedule 13 – Management Information
Schedule 14 – Governance
Schedule 15 – Sub-contractors
Schedule 16 – Variation of Contract Form
Schedule 17 – Exit
Schedule 18 – Enabling Agreement
<b>Enabling Agreement - Annexes</b>
<b>[Drafting Note: The Annexes below are included as part of the Enabling Agreement.]</b>
Front end Terms and Conditions of the Enabling Agreement. <b>[Drafting Note: The Enabling Agreement incorporates by reference the Clauses from Part B of the Contract (but not Part A) and calls out any amendments, exceptions or new provisions in relation to those Part B Clauses.]</b>
Annex 1 – Special Requirements
Annex 2 – Pick List
Annex 3 – Outline Implementation Plan
Annex 4 – Reporting
Annex 5 – Key Personnel
Annex 6 – Transferring Employees

## Form of Agreement

This Agreement is made between the Minister for the Cabinet Office as represented by Crown Commercial Service, a trading fund of the Cabinet Office (the “**Client**”), of 9<sup>th</sup> Floor, The Capital, Old Hall Street, Liverpool L3 9PP and [ ], (a company registered in England and Wales under company number [ ]) (the “**Supplier**”) whose main or registered office is at [ ] together referred to as “the Parties” and is effective as of the Commencement Date.

**[Drafting Note: For the avoidance of doubt, the Commencement Date for the Contract is the execution date of the Contract and the Commencement Date for an Enabling Agreement is the execution date of such Enabling Agreement.]**

It is agreed that:

Crown [Travel Booking  
and Management  
Services] [Venue  
Management Services]  
Final ITT Version

CCS – Contract for the provision of [Crown Travel and Management Services] [Crown Venue Management Services]

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This Form of Agreement together with the Terms and Conditions and Schedules are the documents that collectively form the “Contract”.

**IN WITNESS** of which this Agreement has been duly executed by the Parties.

Signed duly authorised for and on behalf of:

<b>Crown Commercial Service</b>	<b>[Supplier]</b>
<b>Signature:</b>	<b>Signature:</b>
<b>Full Name:</b>	<b>Full Name:</b>
<b>Position:</b>	<b>Position:</b>
<b>Date:</b>	<b>Date:</b>

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## Terms and Conditions

### RECITALS:

**[Drafting Note: The detail below in the Recitals will be finalised prior to signature when all that relevant detail is known by that stage.]**

- (A) The Client wishes for the Supplier to provide certain [travel booking and management services] [venue management services] to the Enabling Authorities. The Client has centralised arrangements in place for purchasing [travel booking and management services] [venue management services] by Central Government Departments. The Client's centralised purchasing arrangements are coming to an end around the date of the Commencement Date and the Client wishes for the Supplier to provide certain [travel booking and management services] [venue management services] to the Enabling Authorities under the terms and conditions of the Contract between the Client and the Supplier and the terms and conditions of each Enabling Agreements between the relevant Enabling Authority and the Supplier.
- (B) To that end, the Client placed a contract notice (Ref: ***To be populated prior to signature***) on [30 March 2015] in the Official Journal of the European Union seeking expressions of interest from providers of [travel booking and management services] [venue management services] to the Enabling Authorities referenced in the Contract.
- (C) The Supplier submitted its response to the Invitation to Tender on [***insert the relevant date prior to signature***].
- (D) In its response to the Invitation to Tender, the Supplier represented to the Client that it is capable of delivering the [travel booking and management services] [venue management services] in accordance with the Client's requirements as set out in the Invitation to Tender. On the basis of the Supplier's response to the Invitation to Tender, the Client selected the Supplier to enter into the Contract.
- (E) With reference to Recitals (A), (B) and (C) above, the Client wishes to provide the Services in accordance with the terms and conditions of the Contract and the Enabling Agreements.



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## **PART A**

**[Drafting Note: Part A contains the clauses that apply between the Client and the Supplier and Part B contains all the terms that apply between the Client and the Supplier but the Part B terms are also incorporated by reference in the Enabling Agreements and, therefore, will also apply between the Enabling Authorities and the Supplier, save for any amendments or exceptions noted in the Enabling Agreement.]**

### **A PART A PROVISIONS**

#### **A1 Initial Contract Period**

- A1.1 The Contract shall take effect on the Commencement Date of the Contract. Each Enabling Agreement shall take effect on each of the Commencement Dates of their respective Enabling Agreements. The Contract and all of the Enabling Agreements shall expire three (3) years from the Commencement Date of the Contract, unless it and/or the Enabling Agreements are otherwise terminated earlier in accordance with the provisions of the Contract or extended in accordance with Clause A2.1 below.
- A1.2 The Supplier and the relevant Enabling Authority shall seek the Client's written approval prior to entering into an Enabling Agreement.

#### **A2 Extension of Initial Contract Period**

- A2.1 The Client shall have the right to extend any or all of the Enabling Agreements for one or more further periods totalling no more than twelve (12) months for any Enabling Agreement from the Initial Contract Period by giving the Supplier not less than six (6) months' written notice prior to the expiry of the Initial Contract Period or the then-existing Contract Period if previously extended, as applicable. If any Enabling Agreements are extended pursuant to this Clause A2.1, the Contract shall be automatically extended to the same date of expiry of the last expiring Enabling Agreement and shall automatically expire on the date of expiry of the last expiring Enabling Agreement. Each Enabling Agreement shall expire at the end of its extension period unless otherwise extended pursuant to this Clause A2.1.
- A2.2 An Enabling Agreement cannot be extended without the prior written consent of the Client in accordance with Schedule 16 (Variation of Contract Form).
- A2.3 Subject to Clause A.17 below in respect of the Charges, any extension under Clause A2 will be on the same terms and conditions of this Agreement as applied during the Initial Contract Period.
- A2.4 Unless otherwise stated in the written notice provided by the Client to the Supplier under Clause A2.1 above, the exit assistance described in Schedule 17 (Exit) (including in respect of the Contract and the relevant Enabling

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Agreement(s) identified in such written notice) shall commence from the date of receipt of such written notice by the Supplier.

- A2.5 If the Contract and all of the Enabling Agreements are expiring at the end of the Initial Contract Period, the Client shall give the Supplier not less than six (6) months' written notice prior to the expiry of the Initial Contract Period to confirm the date upon which the Client requires the exit assistance described in Schedule 17 (Exit) (including in respect of the Contract and the Enabling Agreements) shall commence and, from such date, the Supplier shall provide such exit assistance.

### **A3 Scope of the Contract and the Enabling Agreement**

- A3.1 It is the intention of the Client to encourage all of its Central Government Departments and their associated agencies, non-governmental public bodies and arm's length bodies to, as Enabling Authorities, procure the Services from the Supplier by entering into an Enabling Agreement with the Supplier for such Services.
- A3.2 In consideration of the Client facilitating the arrangements described above in Clause A3.1, the Supplier shall pay the Management Charge associated with each Enabling Agreement, as more particularly described in Clause A12.2 below.
- A3.3 The Supplier acknowledges and agrees that it is under an obligation to enter into an Enabling Agreement with each Enabling Authority if such Enabling Authority wishes to enter into an Enabling Agreement for the Services and that the Supplier is not entitled to refuse to enter into an Enabling Agreement in such circumstances.
- A3.4 In performing its obligations under the Contract and any Enabling Agreement, the Supplier shall not (to the extent possible in the circumstances) discriminate between Enabling Authorities on the basis of their respective sizes.
- A3.5 The Supplier acknowledges and agrees that if an Enabling Authority, who has entered into an Enabling Agreement during the Contract Period, merges with another business or entity or another business or entity acquires the whole or substantially the whole of the business of the Enabling Authority or substantially all of the assets of such Enabling Authority, the Supplier shall continue to provide the Services to the successor entity of the Enabling Authority if requested to do so by the Client and, in such circumstances, the provision of Clause B35.5 below shall apply.
- A3.6 In providing the Services to the Enabling Authorities under the Enabling Agreements, the Supplier shall ensure that such provision shall at all times be in accordance with the Contract save as otherwise expressly set out in the relevant Enabling Agreement.

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A3.7 The template agreement for the Enabling Agreement is set out in Schedule 18 (Enabling Agreement) and shall be used by the Supplier and the Enabling Authorities to enter into any Enabling Agreements. The terms and conditions set out in Schedule 18 (Enabling Agreement) cannot be changed by the Supplier or any Enabling Authority unless expressly agreed by Client and documented in accordance with Schedule 16 (Variation of Contract Form). Any attempt in any Enabling Agreement to amend the Contract shall be void and of no effect unless agreed in writing by the Client and the Contract in accordance with Schedule 16 (Variation of Contract Form).

A3.8 The Parties acknowledge and agree that:

- (a) all of the Clauses of the Contract shall apply between the Client and the Supplier in connection with the Contract, including Part A and Part B of the Contract; and
- (b) The Clauses in Part B of the Contract shall also apply between the Enabling Authorities and the Supplier as incorporated into each Enabling Agreement when executed by the relevant Enabling Authority and the Supplier, save as such Clauses in Part B may be expressly amended as part of such incorporation, as more particularly described in the Enabling Agreement.

A3.9 The Parties acknowledge and agree that:

- (a) Schedules 1 to 6 and Schedule 18 shall apply between the Enabling Authorities and the Supplier and Schedules 1 to 6 shall be incorporated into the Enabling Agreement, as more particularly described in the Enabling Agreement; and
- (b) Schedule 1 and Schedules 7 to 17 shall apply between the Client and the Supplier in connection with the Contract and/or the Enabling Agreements, as applicable.

#### **A4 Scope of the Services**

A4.1 Unless alternative dates for the commencement of the Services are provided under Schedule 7 (Implementation Schedule) or the relevant Enabling Agreement, commencing on the Commencement Date the Supplier shall provide the following services, functions, responsibilities, requirements and deliverables to the Enabling Authorities (as the same may evolve during the Term including adding, removing, supplementing, enhancing, modifying and/or replacing any services and/or activities or deliverables in accordance with the Contract, the relevant Enabling Agreement(s) or as otherwise approved in writing by the Client under Schedule 16 (Variation of Contract Form) from time to time) (together, the “**Services**”):

- (a) the services, functions, responsibilities, requirements and deliverables that the Supplier is required to carry out as specified in the Contract, including in Schedule 2 (Services), Schedule 5 (Security Requirements

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and Plan), Schedule 7 (Implementation Schedule), Schedule 17 (Exit), Annex 1 (Special Requirements) of the relevant Enabling Agreements and Annex 3 (Outline Implementation Plan) of the relevant Enabling Agreements;

- (b) any incidental services, functions, responsibilities, requirements and deliverables not specified in the Contract as within the scope of Supplier's responsibilities but that are reasonably and necessarily required for, or related to, the proper and timely performance and provision of the services, functions, responsibilities, requirements and/or deliverables set out Clause A4.1(a) above.

A4.2 The Supplier shall comply with its obligations in relation to KPIs as set out in Schedule 9 (Key Performance Indicators).

A4.3 The Supplier shall at all times during the Contract Period comply with its obligations to continually improve the Services and the manner in which it provides the as set out in Schedule 10 (Value for Money).

## **A5 Additional Services**

A5.1 In accordance with the Invitation to Tender and the OJEU relating to this Contract, if one of the Other Contracts is being terminated, the Client shall be entitled to request at its sole discretion, by written notice to the Supplier, to provide the Other Contract Services in respect of the relevant terminating Other Contract to the relevant Enabling Authority either under an existing Enabling Agreement or by entering into a new Enabling Agreement with the relevant Enabling Authority, as applicable, provided always that such Other Contract Services are to be provided to the relevant Enabling Authority by the Supplier on the same terms and conditions and pricing as exist under the relevant Other Contract at the time of its termination, unless any amendments are otherwise agreed between the Client and the Supplier.

A5.2 On receipt of a notice from the Client under Clause A5.1 above, the Supplier shall be entitled to agree or refuse to provide such terminating Other Contract Services under an existing Enabling Agreement or by entering into a new Enabling Agreement, as applicable. Where the Supplier agrees to provide such terminating Other Contract Services, such terminating Other Contract Services shall become part of the Services from the date of incorporation into the relevant existing Enabling Agreement or the date of execution of the relevant new Enabling Agreement, as applicable.

## **A6 Beneficiaries – the Enabling Authorities**

A6.1 The Supplier acknowledges and agrees that the rights and benefits of the Client as set out in the Clauses of Part A of the Contract are not solely for the benefit of the Client and will, where applicable, also be for the benefit of the Enabling Authorities. Each of the Enabling Authorities will be third party beneficiaries under the Contract in respect of every term of Part A (other than those relating to payment of Management Charge [**any other exceptions**]).

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Subject to Clauses A6.2 and A6.3 below, the Enabling Authorities will be entitled to enforce the relevant terms of Part A of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. **[Drafting Note: Currently, this Clause A6 focuses on the Clauses of Part A of the Contract. However, if prior to signature of the Contract, the Client considers that any of the Clauses of Part B of the Contract should also be subject to the rules of this Clause A6, such clauses will be expressly identified and set out in this Clause A6.]**

- A6.2 Subject to Clause A6.3 below, all claims from any Enabling Authority against the Supplier in respect of such Enabling Authority's beneficial rights under Part A of the Contract shall be brought, to the extent permissible by law, by the Client itself on behalf of the said Enabling Authority. Any Losses suffered by an Enabling Authority in relation to its beneficial rights under Part A of the Contract will, to the extent permitted by law, be deemed to be Losses suffered by the Client and/or the relevant Enabling Authority in respect of making a claim under this Clause A6.2 and, subject to the limitations and exclusions of liability set out in the relevant Enabling Agreement, will be recoverable directly by the Client against the Supplier.
- A6.3 Solely where the Client is expressly prevented by a first instance decision of the English courts from bringing a claim itself on behalf of the relevant Enabling Authority or where the Client has delegated that the relevant Enabling Authority can bring such claim, such Enabling Authority shall be entitled to enforce the rights and benefits of Part A directly against the Supplier. Any Losses claimed by the Enabling Authority pursuant to this Clause A6.3 shall be subject to the limitations and exclusions of liability set out in the relevant Enabling Agreement.
- A6.4 The Client and the Supplier will be entitled to vary, terminate or rescind the Contract and/or the Enabling Agreements (on the terms set out in the Contract) without the consent of the Enabling Authorities.

**A7 Volume of Services**

- A7.1 The Supplier acknowledges and agrees that the Client and the Enabling Authorities are not making any volume commitment either in the Contract or in any of the Enabling Agreements in respect of the volume of Services that will be requested, used or purchased, as applicable, during the Contract Period.

**A8 Guarantee**

- A8.1 The Supplier shall deliver to the Client a Parent Company Guarantee in the agreed form as set out in Schedule 8 (Guarantee), duly executed by the Guarantor by the Commencement Date. Notwithstanding any other provision of the Contract and the Enabling Agreements, the Contract and the Enabling Agreements shall not come into effect until the date the Supplier provides the executed Parent Company Guarantee as required under this Clause A8.1.
- [Drafting Note: As explained in the ITT, if the Client does not require a**

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**Parent Company Guarantee based on the Supplier's financial standing, the Client will not seek a Parent Company Guarantee delete this Clause from the Contract.]**

A8.2 The Client is entitled to request (and the Supplier shall provide) that the Supplier delivers a Parent Company Guarantee at any time during the Contract Period if there is a material change in the financial standing of the Supplier which results or is likely to result in:

- (a) an adverse impact on the provision of all or a material part of the Services and/or gives rise to a significant risk that the quality or reliability of all or a material part of the Services could be degraded;
- (b) the Supplier failing to meet its obligations and liabilities as set out in the Contract and/or the Enabling Agreements.

## **A9 Supplier's Status**

A9.1 At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in the Contract shall create a Contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

## **A10 The Client's Obligations**

A10.1 Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Supplier.

## **A11 Conflicts of interest**

A11.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Staff are placed in a position where (in the reasonable opinion of the Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Staff and the duties owed to the Client and Enabled Authorities under the provisions of this Contract or any Enabling Agreement.

A11.2 The Supplier shall promptly notify and provide full particulars to the Client or the relevant Enabled Authority if such conflict referred to in Clause A.11.1 above arises or may reasonably be foreseen as arising.

A11.3 The Client reserves the right to terminate this Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems

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necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Client or an Enabling Authority under the provisions of this Contract or any Enabling Agreement, as applicable. The action of the Client pursuant to this Clause A11.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client and/or the Enabling Authority, as applicable.

## **A12 Management Charge, Booking Fees, Commissions and Value for Money**

### **A12.1 General**

- (a) The Management Charge, Booking Fees, and Commissions that apply in connection with the Contract and/or the Enabling Agreements, as applicable, are set out below in this Clause 12.
- (b) The Parties shall comply with their respective obligations as set out in Schedule 10 (Value for Money).
- (c) The terms of Schedule 4 (Pricing and Invoicing) shall apply between the Enabling Authorities and the Supplier in connection with the Booking Fees and pricing under each Enabling Agreement.

### **A12.2 Management Charge**

- (a) In consideration of the establishment and award of this Contract and the management and administration by the Client of the same, the Supplier agrees to pay to the Client the Management Charge in accordance with this Clause A.12.2.
- (b) The Client shall be entitled to submit invoices to the Supplier in respect of the Management Charge due each Month, including as evidenced by the Management Information provided pursuant to Schedule 13 (Management Information), and adjusted:
  - (i) in accordance with paragraphs 5.4 to 5.7 of Schedule 13 (Management Information) to take into account of any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and
  - (ii) in accordance with paragraph 6 of Schedule 13 (Management Information) to take into account of any underpayment or overpayment as a result of the application of the Default Management Charge.
  - (iii) to take account of discrepancies identified the audits rights of the Client under the Contract.

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- (c) Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Client may from time to time reasonably require) the amount stated in any invoice submitted under Clause A12.2(b) above to such account as shall be stated in the invoice (or otherwise notified from time to time by the Client to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.
- (d) The Management Charge shall apply to the Charges as specified in each and every Enabling Agreement and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits and/or any other deductions made under any Enabling Agreement.
- (e) The Supplier shall not pass through or recharge to, or otherwise recover from any Enabled Authority the cost of the Management Charge in addition to the Charges.
- (f) In addition to the Management Charge, the Supplier shall pay the VAT on the Management Charge at the rate and in the manner prescribed by Law from time to time.
- (g) Interest shall be payable on any late payments of the Management Charge under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- (h) If the Contract expressly requires payment of any invoice raised by the Supplier which is required to be paid by the Client, such invoice shall be paid by the Client within thirty (30) days from the date on which the relevant invoice is regarded as valid and undisputed. Any invoices for payment submitted by the Supplier to the Client pursuant to this Clause A12.2(h) shall be considered and verified by the Client in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed.

#### **A12.3 Booking Fees and Commissions**

- (a) The Client agrees that the Supplier is entitled to retain the Booking Fees, where applicable, generated under the Enabling Agreements.
- (b) The Client agrees that the Supplier is entitled to retain the Booking Fees and the Commissions generated in connection with the Enabling Agreements in consideration of and exchange for the Supplier:
  - (i) meeting all staff transfer costs and liabilities (including all Employee Liabilities) incurred by the Supplier under and in accordance with the terms of Schedule 6 (Staff Transfers and Pensions), including in relation to the Transferring Authority Employees, Transferring Former Employees, Transferring Supplier Employees, as applicable;



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- (ii) meeting the costs of complying with the security requirements of Schedule 5 (Security Requirements and Plan), including any data security costs;
  - (iii) meet the costs of any security and vetting clearances and checks of Supplier Personnel, as such security and vetting clearance and checks are more particularly described in Clause B2.2(d) below;
  - (iv) being under a duty to continue to deliver value for money to the Client and to all Enabling Authorities throughout the Contract Period. For the avoidance of doubt the aforementioned duty shall include the obligations to:
    - A) facilitate the transition of Enabling Authorities to on-line booking from off-line booking and to feed back to the Enabling Authorities and separately to the Client on the progress being made in such transition;
    - B) offer the lowest possible Charges and negotiate and book the cheapest Services without reference to the availability or amount of any Commissions available to the Supplier by using any particular third party service provider;
    - C) comply with Benchmarking in accordance with the provisions of Schedule 10 (Value for Money);
    - D) comply with Continuous Improvement in the Services and their delivery in accordance with the provisions of Schedule 10 (Value for Money);
    - E) support FOC requests, for example, bespoke MI requests, differing payment settlement requests/timescales; and
    - F) co-operate with the suppliers of the Other Contracts in any negotiations with third party providers of Services so as to drive down as much as reasonably possible the cost of the Services to the Client and the Enabling Authorities, as applicable, and to pass on any savings thereby secured to the Client and Enabling Authorities, as applicable, at the earliest opportunity. To that end, the Supplier will maintain regular contact with the suppliers of the Other Contracts so as to co-ordinate their efforts in the performance of its obligations under this Clause A12.3(b)(iv)(F); and
  - (v) meeting the costs of any Transition Assistance provided by the Supplier in accordance with Schedule 17 (Exit).
- (c) Without prejudice to Clause A12.3(b) above, the Supplier has the option to return any surplus Commissions to the Enabling Authorities under their respective Enabling Agreements provided the Supplier agrees such

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surplus returns in advance with the Customer Authority in accordance with Schedule 16 (Variation of Contract Form).

### **A13 Sufficiency of Supplier's Pricing**

A13.1 The Supplier is deemed to have satisfied itself before entering into the Contract as to the accuracy and sufficiency of the Booking Fees rates and prices submitted in both Schedule 4 (Pricing and Invoicing) and the Pick List, as applicable, which shall cover all of the Supplier's obligations, risks and contingencies in connection with the Contract and the Enabling Agreements, as applicable, and provision of the Services, subject to the due diligence provisions of Clause B.3 below.

### **A14 Provision of Management Information**

A14.1 The Supplier shall, at no charge to the Client, submit to the Client complete and accurate Management Information in accordance with the provisions of Schedule 13 (Management Information).

A14.2 The Supplier grants the Client a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:

- (a) use and to share with any [Other Contracting Body] and [Relevant Person]; and/or
- (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Client for the Client's normal operational activities including but not limited to administering this Contract and/or all Enabling Agreements, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

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- A14.3 The Client shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.
- A14.4 The Client may consult with the Supplier to help with its decision regarding any exemptions under Clause A14.3 above but, for the purpose of this Contract, the Client shall have the final decision in its absolute and sole discretion.
- A14.5 The Supplier shall complete and upload the MISO Template, issued by the Client no later than 7th of each Month for the duration of the Contract Period.
- A14.6 The Supplier shall provide a Monthly update to the Client as to the progress of the Implementation Plans for all Enabling Agreements, such update to contain all details reasonably requested by the Client and to be provided to a person nominated by the Client (as may be updated by the Client from time to time) by the 14<sup>th</sup> of every Month).
- A14.7 Failure by the Supplier to provide the information described above in this Clause A14 shall be deemed a material Default of the Contract.

#### **A15 Recovery of Sums Due**

- A15.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any liquidated sum which the Supplier is liable to pay to the Client in respect of any breach of the Contract), that sum may be deducted from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or Contract with the Client or the Crown.
- A15.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

#### **A16 Value added Tax and Other Tax Requirements**

- A16.1 The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.
- A16.2 Failure to comply may constitute a material breach of this Contract and the Client may exercise the rights and provisions conferred by Clause B20 below.
- A16.3 If any VAT or tax is payable on the Management Charge, such VAT or tax shall be payable by the Supplier, at the prevailing rate as applicable.
- A16.4 The Supplier shall indemnify the Client on a continuing basis against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Client at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Enabling Agreements, the Contract or in respect of the

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Management Charge, as and if applicable. Any amounts due under this paragraph shall be paid by the Supplier to the Client not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Client.

#### **A17 Price adjustment on extension of the Initial Contract Period**

A17.1 The Charges and Management Charge shall apply for the Contract Period.

A17.2 In the event that the Client agrees to extend the Contract beyond the Initial Contract Period pursuant to Clause A2 above, the Client shall, in the 6 Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Supplier (for a period of not more than 30 Working Days) to agree a reduction in the Charges.

A17.3 If the Parties are unable to agree a reduction in the Charges in accordance with Clause A17.2 above, the Charges that applied during the Initial Contract Period shall continue to apply for all extensions of the Contract under Clause A2.

A17.4 If the Parties agree to a reduction of the Charges in accordance with Clause A.17.2 above, the revised Charges will take effect from, unless a different date is otherwise agreed by the Parties, the first day of any period of extension of the Contract and shall apply during such period of extension and any other extensions of the Contract under Clause A2 above.

#### **A18 Implementation**

A18.1 The Supplier shall comply with its obligation in relation to Implementation in accordance with Schedule 7 (Implementation Schedule).

#### **A19 Governance, Dispute Resolution Procedure and Complaints Handling**

A19.1 The Parties shall comply with their respective obligations as set out in Schedule 14 (Governance) and all governance required by the Client in relation to Schedule 6 (Staff Transfers and Pensions) shall be in accordance with Schedule 14 (Governance).

A19.2 All disputes under the Contract and/or the Enabling Agreement shall be escalated in accordance with the Dispute Resolution Procedure set out in Schedule 14 (Governance). **[Drafting Note: If there is any conflict or gap the operational escalation procedure for the Enabling Agreements and the one in Schedule 14 (Governance), then this will be addressed by the Client prior to signature of the Contract.]**

A19.3 Complaints Handling:

- (a) Either Party shall notify the other Party of any Complaints made by the Enabling Authorities, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of

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becoming aware of that Complaint and, if the Supplier is the Party providing the notice, such notice shall contain full details of the Supplier's plans to resolve such Complaint.

- (b) Without prejudice to any rights and remedies that a complainant may have at Law (including under the Contract and/or an Enabling Agreement), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Contract and/or an Enabling Agreement, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- (c) Within two (2) Working Days of a request by the Client, the Supplier shall provide full details of a Complaint to the Client, including details of steps taken to achieve its resolution.

A19.4 Notwithstanding any other provision of the Contract and/or the Enabling Agreement, the Parties agree that any termination right that either the Supplier and/or an Enabling Authority may wish to exercise under the relevant Enabling Agreement, shall be escalated to the Client and the Supplier for resolution in accordance with Dispute Resolution Procedure in Schedule 14 (Governance). The Parties agree that the relevant Enabling Agreement cannot be terminated unless and until the Dispute Resolution Procedure is followed in accordance with this Clause A19.4.

A19.5 Notwithstanding any other provision of the Contract and/or the Enabling Agreement, in respect of all Disputes that are being attempted to be resolved in accordance with the terms of the Enabling Agreement, if such Dispute has not been resolved by the end of the commercial negotiation phase described in Part C of the Enabling Agreement, such Dispute shall be escalated to the Client and the Supplier for resolution in accordance with Dispute Resolution Procedure in Schedule 14 (Governance). For the avoidance of doubt, the escalation pursuant to this Clause A19.5 to the Client and the Supplier under Schedule 14 (Governance) shall commence at the level beginning at paragraph 6.1(2) of Schedule 14 (Governance).

## **A20 Commercially Sensitive Information**

A20.1 The Parties shall comply with their respective obligations as set out in Schedule 12 (Commercially Sensitive Information).

A20.2 The Parties acknowledge and agree that the Commercially Sensitive Information identified in Schedule 12 (Commercially Sensitive Information) applies in respect of the Contract and each Enabling Agreement.

## **A21 Sub-Contractors**

A21.1 The Supplier shall comply with its obligations in relation to Sub-contractors as set out in Schedule 15 (Sub-contractors).

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A21.2 The provisions relating to Key Sub-Contracts are set out in Clause A25 below.

## **A22 Exit Management**

A22.1 The Parties shall comply with their respective exit management obligations as set out in Schedule 17 (Exit).

A22.2 The Supplier shall provide the Client with the notices, information, and assistance in relation to staff transfers and pensions as more particularly described in Schedule 6 (Staff Transfer & Pensions).

A22.3 The Client and the Supplier shall work together in relation to each expiry and/or termination of an Enabling Agreement, including in relation to any expiry or termination dates and related exit assistance identified pursuant to Clauses A2.4 and A2.5 above.

## **A23 Assistance in relation to Enabling Agreements**

A23.1 Where an Enabling Authority is entering into an Enabling Agreement, the Supplier shall promptly provide the Client and such Enabling Authority with all reasonable information and assistance as may be required from time to time to enable the Client or such Enabling Authority, as appropriate, to:

- (a) carry out appropriate due diligence with respect to the provision of the Services;
- (b) effect a smooth transfer and/or inter-operation (as the case may be) between the services previously received by such Enabling Authority and the Services to be provided under the Enabling Agreement that such Enabling Authority wishes to enter into; and
- (c) make a proper assessment as to any risks related to the provision of the Services to such Enabling Authority.

## **A24 Records, Audit Access and Open Book Data**

A24.1 The Supplier shall keep and maintain, until the later of:

- (a) seven (7) years after the date of termination or expiry of the Contract; or
- (b) seven (7) years after the date of termination or expiry of the last Enabling Agreement to expire or terminate; or
- (c) such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of the Contract, including the Enabling Agreements, the Services provided pursuant to the Enabling Agreements, and the amounts paid by each the Enabling Authorities under the Enabling Agreements and those supporting tests

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and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.

A24.2 The Supplier shall keep the records and accounts referred to in Clause A24.1 in accordance with Good Industry Practice and Law.

A24.3 The Supplier shall provide the Client with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised senior member of the Supplier's management team or by the Supplier's external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.

A24.4 Each Self Audit Certificate should be based on tests completed against a representative sample of ten percent (10%) of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:

- (a) orders are clearly identified as such in the order processing and invoicing systems and, where required, orders are correctly reported in the MI Reports;
- (b) all related invoices are completely and accurately included in the MI Reports; and
- (c) all Charges to Enabling Agreements comply with any requirements under the Contract on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable).

A24.5 Each Self Audit Certificate should be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

A24.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause A24.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under the Contract, including for the following purposes to:

- (a) verify the accuracy of the Charges and any other amounts payable by an Enabling Agreement under an Enabling Agreement (including proposed or actual variations to them in accordance with the Contract);
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

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- (c) verify the Open Book Data;
- (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (e) identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Client shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
- (g) obtain such information as is necessary to fulfil the Client's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;
- (i) carry out the Client's internal and statutory audits and to prepare, examine and/or certify the Client's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
- (k) verify the accuracy and completeness of any Management Information delivered or required by the Contract;
- (l) review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (m) review the integrity, confidentiality and security of the Client Personal Data; and/or
- (n) receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Contract in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.

A24.7 The Client shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of Services pursuant to the Enabling Agreements, save insofar as the



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Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Client.

A24.8 Subject to the Client's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

- (a) all information within the scope of the Audit requested by the Auditor;
- (b) reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and
- (c) access to the Supplier Personnel.

A24.9 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Charge due in respect of any one Contract Year or year of any Enabling Agreements then, without prejudice to the Authority's other rights under the Contract, the Supplier shall reimburse the Client its reasonable costs incurred in relation to the Audit.

A24.10 If an Audit reveals that:

- (a) that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due during any Contract Year of the Contract and any Enabling Agreement; and/or
- (b) a material Default has been committed by the Supplier;

then the Authority shall be entitled to terminate the Contract.

A24.11 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause A24.8(c) above.

## **A25 Supply Chain Rights and Protection**

### **A25.1 Appointment of Key Sub-Contractors**

- (a) The Client has consented to the engagement of the Key Sub-Contractors listed in Schedule 15 (Sub-Contractors).
- (b) Where during the Contract Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Client and the Enabling Authority with whom it has entered into an Enabling Agreement and shall at the time of requesting such consent, provide the Client with the information detailed in Clause A25.1(c) below. The decision of the Client to consent or not will not be unreasonably withheld or delayed. The Client and/or the Enabling Authority may reasonably withhold their consent to the appointment of a Key Sub-Contractor if either of them considers that:

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- (i) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
  - (ii) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - (iii) the proposed Key Sub-Contractor employs unfit persons.
- (c) The Supplier shall provide the Client and the Contracting Body with whom the Supplier has entered into an Enabling Agreement with the following information in respect of the proposed Key Sub-Contractor:
  - (i) the proposed Key Sub-Contractor's name, registered office and company registration number;
  - (ii) the scope/description of any Services to be provided by the proposed Key Sub-Contractor;
  - (iii) where the proposed Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Client that the proposed Key Sub-Contract has been agreed on "arm's-length" terms; and
  - (iv) Key Sub-Contract price expressed as a percentage of the total projected Management Charge over the Contract Period.
- (d) If requested by the Client and/or the Enabling Authority with whom the Supplier has entered into an Enabling Agreement, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause A25.1(c) above, the Supplier shall also provide:
  - (i) a copy of the proposed Key Sub-Contract; and
  - (ii) any further information reasonably requested by the Client and/or the Enabling Authority with whom the Supplier has entered into an Enabling Agreement.
- (e) The Supplier shall ensure that each Key Sub-Contract or new or replacement Key Sub-Contract shall include:
  - (i) provisions which will enable the Supplier to discharge its obligations under this Contract and the Enabling Agreements;
  - (ii) a right under CRTPA for the Client to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Client;
  - (iii) a provision enabling the Client to enforce the Key Sub-Contract as if it were the Supplier;

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- (iv) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Client;
- (v) obligations no less onerous on the Sub-Contractor than those imposed on the Supplier under the Contract in respect of:
  - A) the FOIA requirements set out in Clause B13 below;
  - B) the data protection requirements set out in Clause B14 below;
  - C) the obligation not to embarrass the Client or otherwise bring the Client into disrepute as set out in Clause B15 below;
  - D) the keeping of records in respect of the services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
  - E) the conduct of audits set out in Clause A24 below; and
  - F) provisions relating to Fraud and bribery as set out in the Contract;
  - G) provisions relating to confidentiality as set out in the Contract
  - H) provisions relating to Data security as set out in the Contract, including as set out in Schedule 5 (Security Requirements and Plan);
  - I) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed under Part B of the Contract of the Contract; and
- (vi) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Client; and
- (vii) a provision reflecting the terms relating to the payment of invoices by the Client as set out in Clause A12.2(h) above and the payment of invoices by the Enabling Authority in accordance with paragraph 5.3 of Schedule 4 (Pricing and Invoicing).

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## **A26 Supply Chain Protection**

A26.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
- (b) a right for the Client and any Enabling Authority with whom the Supplier has entered an Enabling Agreement to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period

A26.2 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;

A26.3 Notwithstanding any provision of Clauses B11 and B15, if the Supplier notifies the Client that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Client otherwise discovers the same, the Client shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

## **A27 Termination of Sub-Contracts**

A27.1 The Client may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Client's right of termination pursuant to any of the termination events in Clause B20, except termination due to no fault of the Supplier under Clause B24; and/or
  - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Client or otherwise brought the Client into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Client, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
  - (iii) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
    - A) the Client has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - B) the Client has not served its notice of objection within six (6) months of the later of the date the Change of Control took place

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or the date on which the Client was given notice of the Change of Control.

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A27.2 Where the Client requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 27.1 above, the Supplier shall remain responsible for fulfilling all its obligations under the Contract, including the provision of the Services.

## **A28 Retention of Legal Obligations**

A28.1 Notwithstanding any other provision of the Contract or the Enabling Agreements, the Supplier shall remain responsible at all times 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.

## **A29 Annual Review**

A29.1 The Client and the Supplier shall meet annually, no later than the twelfth (12<sup>th</sup>) month anniversary of Commencement Date of the Contract and each twelfth (12<sup>th</sup>) month anniversary thereafter to discuss the Booking Fees in order to determine if they can be reduced to reflect any reduction in the costs of providing the Services under the Enabling Agreements. Any reduction in the Booking Fees shall apply to the Services provided under the Enabling Agreements from the date agreed by the Parties pursuant to this Clause A29.

## **A30 Business Continuity and Disaster Recovery**

A30.1 Within thirty (30) Working Days from the Commencement Date of the Contract, the Supplier shall prepare and deliver to the Client, for the Client's written approval, a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- (b) the recovery of the Services in the event of a Disaster.

## **A31 Insurance**

A31.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under the Contract and the Enabling Agreements, and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract in accordance with this Clause.

A31.2 Pursuant to this Clause A31, the Supplier shall hold, at its own cost and expense, the following insurance cover:

- (a) employers' liability insurance with cover (for a single event or a series of related events and in aggregate) of not less than the applicable statutory limits or ten million pounds (£10,000,000), whichever is the greater;

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- (b) public and products liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000); and
- (c) professional indemnity insurance with cover of not less than one million pounds (£1,000,000) per event.

A31.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Contract and/or any Enabling Agreements. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under the Contract and the Enabling Agreements.

A31.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in this Clause A31 for six (6) years after the expiry or termination of the Contract.

A31.5 The Supplier shall give the Client, on request, copies of all insurance policies referred to in this Clause A31 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

A31.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause A31 the Client may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.

A31.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

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## **PART B**

### **B PART B PROVISIONS**

#### **B1 Definitions and Interpretation**

##### **B1.1 Definitions**

- (a) In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule or Annex in which that capitalised expression appears.
- (b) If a capitalised expression does not have an interpretation in Schedule 1 (Definitions) or the relevant Schedule or Annex, it shall have the meaning given to it in the Contract. If no meaning is given to it in the Contract, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

##### **B1.2 Interpretation and conflicts**

- (a) In the Contract, unless the context otherwise requires:
  - (i) the singular includes the plural and vice versa;
  - (ii) reference to a gender includes the other gender and the neuter;
  - (iii) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - (iv) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - (v) 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";
  - (vi) 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;
  - (vii) references to "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future



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facts; and to “**undertakings**” as references to obligations under the Contract;

- (viii) references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the clauses and schedules of the Contract and references in any Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Schedule or the part of the Schedule in which the references appear;
  - (ix) any reference to the Contract includes Schedules 1 (Definitions) to Schedule 17 (Exit); and **[Drafting Note: This will continue to be reviewed by the Client to ensure the correct references are used prior to signature of the Contract.]**
  - (x) the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract.
- (b) Subject to Clause B1.2(c) below, in the event and to the extent only of a conflict between any of the provisions of the Contract, the conflict shall be resolved, in accordance with the following descending order of precedence:
- (i) the Clauses and Schedule 1 (Definitions);
  - (ii) Schedules;
  - (iii) Appendices.

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- (c) If there is any conflict between the provisions of the Contract and provisions of the Enabling Agreement, the provisions of the Contract shall prevail over those of the Enabling Agreement save for any changes to the provisions of the Enabling Agreement, as permitted for the Contract and as authorised by the Client in writing, shall prevail over Contract.

**[Drafting Note: If this need further refinement in the context of the incorporation of terms in the Enabling Agreement, it will be addressed by the Client prior to signature.]**

## **B2 Key Personnel, Supplier Personnel, Relevant Convictions and Staff Transfers**

### **B2.1 Key Personnel**

- (a) The names of the Supplier Staff who perform the key roles agreed by the Parties (“**Key Roles**”) shall be set out in Annex 5 (Key Personnel) of the Enabling Agreement.
- (b) The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period.
- (c) The Enabling Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel. The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Schedule 17 (Exit)) unless:
  - (i) requested to do so by the Enabling Authority;
  - (ii) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - (iii) the person’s employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
  - (iv) the Supplier obtains the Enabling Authority’s prior written consent (such consent not to be unreasonably withheld or delayed).
- (d) The Supplier shall:
  - (i) notify the Enabling Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - (ii) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

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- (iii) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
- (iv) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
- (v) ensure that any replacement for a Key Role:
  - A) has a level of qualifications and experience appropriate to the relevant Key Role; and
  - B) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced;
- (vi) shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- (e) The Enabling Authority may require the Supplier to remove any Key Personnel that the Enabling Authority considers in any respect unsatisfactory. The Enabling Authority shall not be liable for the cost of replacing any Key Personnel.

## **B2.2 Supplier Personnel**

- (a) The Supplier shall:
  - (i) 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 Policy and the Standards; and
    - C) comply with all reasonable requirements of the Enabling Authority concerning conduct at the Enabling Authority's premises, including the security requirements set out in Schedule 5 (Security Requirements and Plan);
  - (ii) subject to Schedule 6 (Staff Transfer and Pensions), 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 Client or the Enabling Authorities;

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- (iii) 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 the Contract shall be a Default by the Supplier;
  - (iv) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
  - (v) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - (vi) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
  - (vii) procure that the Supplier Personnel shall vacate the Enabling Authorities' premises immediately upon expiry of the relevant Enabling Agreement.
- (b) If the Enabling Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of the relevant Enabling Agreement, it may:
- (i) refuse admission to the relevant person(s) to the [Enabling Authority Premises]; and/or
  - (ii) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- (c) The decision of the Enabling Authority as to whether any person is to be refused access to the Enabling Authority Premises shall be final and conclusive.
- (d) The Supplier shall carry out security and vetting clearances of the Supplier Personnel, which shall include vetting in compliance with the HMG Baseline Personnel Security Standard and, if requested by the Client, Criminal Records Bureau check as per the Client's Staff Vetting Procedures. The Enabling Authority is also entitled to request the Supplier to carry out additional security and vetting clearances and checks of the Supplier Personnel at the time the Enabling Agreement is being entered into. The Supplier shall maintain full and accurate records of all such security and vetting clearances and checks such that the Client (or its authorised agents) may verify that the Supplier has carried out such security and vetting clearances and checks;

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### **B2.3 Relevant Convictions**

- (a) The Supplier shall carry out checks for Relevant Convictions prior to any Supplier Personnel providing Services under the Contract and/or any Enabling Agreement.
- (b) The Supplier shall ensure that no person who has a Relevant Conviction or who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions, is employed or engaged in any part of the provision of the Services without Approval.

### **B3 Due Diligence**

B3.1 The Supplier acknowledges that:

- (a) the Client has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under the Contract;
- (b) it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Client before the Commencement Date of the Contract) and has entered into the Contract in reliance on its own due diligence alone.
- (d) it shall not be excused from the performance of any of its obligations under the Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges (including by way of increasing the Booking Fees or reducing the level of Management Charge), arising as a result of any:
  - (i) misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere; and/or
  - (ii) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

### **B4 Outline Implementation Plan**

B4.1 The Supplier shall populate the Outline Implementation Plan set out in Annex 3 (Outline Implementation Plan) of the Enabling Agreement.

### **B5 Sustainability**

B5.1 The Supplier acknowledges that the Client places great emphasis on sustainability.

B5.2 The Supplier shall be responsible for the sustainability of the Services and Supplier's systems and shall at all times provide a level of sustainability which

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is in accordance with Good Industry Practice, the Law, the Standards, and any sustainability requirements set out in Schedule 2 (Services) and elsewhere in the Contract.

- B5.3 The Client shall have the right to request that the Supplier provide a sustainability plan in connection with the sustainability requirements described herein and on receipt of such request, the Parties shall meet to discuss and finalise such plan as soon as reasonably practicable. On finalisation of the agreed sustainability plan, the Parties shall comply with their respective obligations in such plan in accordance with the terms of such plan.

## **B6 Standards**

- B6.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Contract.
- B6.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with Schedule 16 (Variation of Contract Form).
- B6.3 Where a new or emergent standard is to be developed or introduced by the Client, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision of the Services is explained to the Client, prior to the implementation of the new or emergent Standard.
- B6.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall be agreed in accordance with Schedule 16 (Variation of Contract Form) shall be implemented within an agreed timescale.
- B6.5 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
- (a) be appropriately experienced, qualified and trained to supply the Services in accordance with the Contract;
  - (b) apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
  - (c) obey all lawful instructions and reasonable directions of the Client (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Client.

## **B7 Performance and Service Levels**

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**[Drafting Note: The Client is considering whether the provisions under this Section should be incorporated into Schedule 3 (Service Levels and Services Credits).]**

#### B7.1 Performance

- (a) The Supplier shall perform its obligations under this Contract in accordance with:
  - (i) the requirements of the Contract;
  - (ii) the terms and conditions of the respective Enabling Agreements;
  - (iii) Good Industry Practice;
  - (iv) all applicable Standards; and
  - (v) in compliance with all applicable Law.
- (b) The Supplier shall bring to the attention of the Client, any conflict between any of the requirements of Clause B7.1(a) above shall comply with the Client's decision on the resolution of any such conflict.

#### B7.2 Service Levels and Service Credits

- (a) The Parties shall comply with the provisions of Schedule 3 (Service Levels and Service Credits).
- (b) The Supplier shall at all times during the Contract Period provide the Services to meet or exceed the Service Levels.
- (c) The Supplier shall pay or credit, as applicable, the Service Credits due in accordance with Schedule 3 (Service Levels and Service Credits).
- (d) The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the relevant Enabling Authority Customer as a result of the Supplier's failure to meet the Service Levels in accordance with Schedule 3 (Service Levels and Service Credits).
- (e) A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
  - (i) the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
  - (ii) the Service Level Failure:
    - A) exceeds the relevant Service Level Threshold;

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- B) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
- C) results in:
  - a. the corruption or loss of any Customer Data (in which case the remedies under Clause B14 (Protection of Customer Data) shall also be available); and/or
  - b. the Client being required to make a compensation payment to one or more third parties; and/or
- D) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause B20, except for termination at no fault of the Supplier under Clause B24.

### **B7.3 Critical Service Level Failure**

B7.4 On the occurrence of a Critical Service Level Failure:

- (a) any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- (b) the Customer shall (subject to the Service Credit Cap set out in Schedule 3 (Service Levels and Service Credits) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Booking Fees which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause B7.4 shall be without prejudice to the right of the Client to terminate the Enabling Agreement and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

(c) The Supplier:

- (i) agrees that the application of Clause B7.4 above is commercially justifiable where a Critical Service Level Failure occurs; and
- (ii) acknowledges that it has taken legal advice on the application of Clause B7.4 and has had the opportunity to price for that risk when calculating the Booking Fees.

## **B8 CHANGE**

B8.1 Variation Procedure

- (a) Subject to the provisions of this Clause and, in respect of any change to the Management Charge, subject to the provisions of the Contract, the Authority may request a variation to the Contract provided that such



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variation does not amount to a material change of the Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**" and shall be documented in accordance with Schedule 16 (Variation of Contract Form).

- (b) The Client may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a Variation by completing and sending the Schedule 16 (Variation of Contract Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.
- (c) The Supplier shall respond to the Authority's request pursuant to Clause B8.1(a) above within the time limits specified the Client in Schedule 16 (Variation of Contract Form). Such time limits shall be reasonable and ultimately at the discretion of the Client having regard to the nature of the proposed Variation.
- (d) In the event that the Parties are unable to agree a Variation, it shall be escalated in accordance with the Dispute Resolution Procedure.

B8.2 the Supplier is unable to agree to or provide

## **B9 Legislative Change**

B9.1 The Supplier shall neither be relieved of its obligations under the Contract nor be entitled to an increase in the Booking Fees as the result of:

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

B9.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause B9.1(b) above, the Supplier shall:

- (a) notify the Client as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, the Booking Fees, the Contract and/or Enabling Agreements; and
- (b) provide the Authority with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
  - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of

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relating to continuous improvement in Schedule 10 (Value for Money), has been taken into account in amending the Booking Fees.

- B9.3 Any change in the Booking Fees or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause B9.1(b)) shall be implemented in accordance with Schedule 16 (Variation of Contract Form).

## **B10 INTELLECTUAL PROPERTY RIGHTS**

### **B10.1 Allocation of title to IPR**

- (a) Save as granted under the Contract, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
- (b) 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 B10.1(a) above, 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).
- (c) Subject to Clauses B10.1(d) below, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- (d) Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Services during the Contract Period and for no other purpose.

### **B10.2 IPR Indemnity**

- (a) The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- (b) The Supplier shall at during and after the Contract Period, on written demand indemnify the Client against all Losses incurred by, awarded against or agreed to be paid by the Client (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- (c) If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
  - (i) procure for the Client the right to continue using the relevant item which is subject to the IPR Claim; or

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- (ii) 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;
  - C) there is no additional cost to the Client; and
  - D) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- (d) If the Supplier elects to procure a licence in accordance with Clause B10.2(c)(i) above or to modify or replace an item pursuant to Clause B10.2(c)(ii) above, but this has not avoided or resolved the IPR Claim, then:
  - (i) the Client may terminate the Contract by written notice with immediate effect; and
  - (ii) without prejudice to the indemnity set out in Clause B10.2(b) above, 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.

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## **B11 Confidentiality**

B11.1 For the purposes of this Clause B11, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

B11.2 Except to the extent set out in this Clause B11 or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in the Contract or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

B11.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause B13 shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Client arising out of or in connection with the Contract;
  - (ii) the examination and certification of the Client '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 Client is making use of its resources; or
  - (iii) the conduct of a Central Government Body review in respect of the Contract; or
  - (iv) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence

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under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

- B11.4 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.
- B11.5 Subject to Clauses B11.1 and B11.3 above, the Supplier may only disclose the Confidential Information of the Client on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under the Contract; and
  - (b) its professional advisers for the purposes of obtaining advice in relation to the Contract.
- B11.6 Where the Supplier discloses the Confidential Information of the Client pursuant to Clause B11.5 above, it shall remain responsible at all times for compliance with the confidentiality obligations set out in the Contract by the persons to whom disclosure has been made.
- B11.7 The Client may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body or Other Contracting Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;
  - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
  - (c) to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause B11.7(a) above (including any benchmarking organisation) for any purpose relating to or connected with the Contract;
  - (e) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
  - (f) to a proposed transferee, assignee or novatee of, or successor in title to the Client; and
  - (g) for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality

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agreement or arrangement containing terms no less stringent than those placed on the Client under this Clause B11.7.

B11.8 For the avoidance of doubt, the Confidential Information that the Client may disclose under Clause B11.7 above shall include information relating to Enabling Agreements, including service levels, pricing information and the terms of any Enabling Agreement may be shared with any Central Government Body or Other Contracting Body from time to time.

B11.9 Nothing in this Clause B11 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of the Contract 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.

B11.10 In the event that the Supplier fails to comply with Clauses B11.2 to B11.5 above, the Client reserves the right to terminate this Framework Agreement for material Default.

## **B12 Transparency**

B12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Authority shall determine whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Client may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

B12.2 Notwithstanding any other provision of the Contract, the Supplier hereby gives its consent for the Client to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to the Contract agreed from time to time.

B12.3 The Supplier acknowledges that publication of the Contract will include the publication of the name and contact details of the Supplier Representative. Such details will not be redacted. By executing the Contract, the Supplier confirms that it has ensured that the Supplier Representative has given their consent to the publication of their name and contact details or otherwise taken steps to ensure that publication will not breach the Data Protection Act 1998. The name and contact details of any subsequent Supplier Representative details will also be published and in every such case the Supplier will ensure that consent is obtained or otherwise takes steps to ensure that publication of those details will not amount to a breach of the Data Protection Act 1998.

B12.4 The Supplier shall assist and cooperate with the Client to enable the Client to publish the Contract.

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### **B13 Freedom of Information**

- B13.1 The Supplier acknowledges that the Client is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Client all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Client with a copy of all Information belonging to the Client requested in the Request for Information which is in the Supplier's possession or control in the form that the Client requires within five (5) Working Days (or such other period as the Client may reasonably specify) of the Client's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Client.
- B13.2 The Supplier acknowledges that the Client may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Client 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 the Contract) for the purpose of the Contract, the Client shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **B14 Protection of Personal Data**

**[Drafting Note: If there is any conflict between the data security provisions in Annex 3 of Schedule 6 and this B14, the Client will address such conflicts prior to signature of the Contract.]**

- B14.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under the Contract, the Parties acknowledge that the Client is the Data Controller and that the Supplier is the Data Processor.
- B14.2 The Supplier shall:
- (a) Process the Personal Data only in accordance with instructions from the Client to perform its obligations under the Contract;

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- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Client (save where such disclosure or transfer is specifically authorised under the Contract);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause B14.2 and Clause B11 above;
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by the Contract; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Client within five (5) Working Days if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Client's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Client with full cooperation and assistance (within the timescales reasonably required by the Client) in relation to any complaint, communication or request made (as referred to at Clause B14.2(e) above, including by promptly providing:
  - (i) the Client with full details and copies of the complaint, communication or request;



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- (ii) where applicable, such assistance as is reasonably requested by the Client to enable the Client to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
- (iii) the Client, on request by the Client, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Client, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause B14.2 and provide to the Client copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

B14.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together “**Restricted Countries**”). If, after the Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a variation to the Client which, if it is agreed by the Client, shall be dealt with in accordance with Clause B8.1 and [Clauses xx] to [xx];
- (b) the Supplier shall set out in its proposal to the Client for a Variation, details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Client’s compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Client, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

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- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Client may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into the Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - A) a direct data processing agreement with the Client on such terms as may be required by the Client; or
    - B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Client and the Supplier relating to the relevant Personal Data transfer,

and the Supplier acknowledges that in each case, this may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Client deems necessary for the purpose of protecting Personal Data.

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B14.4 The Supplier shall use its reasonable endeavours to assist the Client to comply with any obligations under the DPA and shall not perform its obligations under the Contract in such a way as to cause the Client to breach any of the Client's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

## **B15 Publicity and Branding**

B15.1 Subject to Clause B16 below (Marketing), the Supplier shall not:

- (a) make any press announcements or publicise the Contract in any way; or
- (b) use the Client's name or brand in any promotion or marketing or announcement,

without Approval (the decision of the Client to Approve or not shall not be unreasonably withheld or delayed).

B15.2 Each Party acknowledges to the other that nothing in the Contract either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

B15.3 The Client shall be entitled to publicise the Contract in accordance with any legal obligation upon the Client, including any examination of the Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## **B16 Marketing**

B16.1 The Supplier shall obtain the Client's Approval prior to publishing any content in relation to the Contract using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Client may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Client within one (1) Month of receipt of such notice, the Client shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

## **B17 Representations and Warranties**

B17.1 Each Party represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform the Contract;
- (b) the Contract is executed by its duly authorised representative;

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- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under the Contract; and
- (d) its obligations under the Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

B17.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under the Contract;
- (c) it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Client before the Commencement Date of the Contract;
- (d) its execution, delivery and performance of its obligations under the Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
- (e) as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its response to the Invitation to Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by the Contract;
- (f) as at the Commencement Date of the Contract, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- (g) it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Client which are necessary for the performance of the Supplier's obligations under the Contract;

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- (h) it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Client's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Client and/or Other Contracting Bodies.
- (i) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (j) it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- (k) for the duration of the Contract and any Enabling Agreements and for a period of twelve (12) Months after the termination or expiry of the Contract, the Supplier shall not employ or offer employment to any staff of the Client or the staff of any Enabling Authorities who has been associated with the procurement and/or provision of the Services without the prior written consent of the relevant Client or Enabling Authority, as applicable, which shall not be unreasonably withheld.

B17.3 Each of the representations and warranties set out in Clauses B17.1 and B17.2 above shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in the Contract.

B17.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses B17.1 and B17.2 above has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

B17.5 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Client may have in respect of the breach of that provision by the Supplier which constitutes a material Default of the Contract.

B17.6 Each time that an Enabling Agreement is entered into, the warranties and representations in Clauses B17.1 and B17.2 above shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## **B18 Indemnities**

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B18.1 The Supplier shall indemnify, defend and hold the Client and their respective officers, directors, employees, agents, advisers, independent contractors, successors and assignees harmless from and against any Losses arising from or incurred in connection with any of the following:

- (a) any fine or penalty imposed by Law and resulting directly from any Default by the Supplier or any Sub-Contractor or Supplier Personnel, including any fines, penalties and/or awards made by the Client, or ordered by, or made necessary by, the direction or requirement of any Regulator against the Client, and all reasonable costs and expenses incurred in investigating, reviewing, defending and administering on an on-going basis any such fines, penalties, payments, redress and/or awards;
- (b) any breach by the Supplier or any Sub-Contractor or Supplier Personnel of Supplier's confidentiality obligations under Clause B11 above.

## **B19 Liabilities**

B19.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any wrongful termination of all or part of the Contract or an anticipatory or wilful or repudiatory breach of all or part of the Contract or any abandonment of work by the Supplier, as applicable; or
- (e) any liability to the extent it cannot be excluded or limited by Law.

B19.2 The Supplier does not exclude or limit its liability in respect of the indemnities given by the Supplier under Clause B10.2 (in relation to IPR), Clause B18.1(a) (in relation to fines, penalties and awards), Clause B18.1(b) (in relation to confidentiality) and/or under Schedule 6 (Staff Transfer and Pensions), in each case whether before or after the making of a demand pursuant to the indemnity therein.

B19.3 **[Drafting Note: This is the liability cap for the Contract.]** Subject to Clauses B19.1 and B19.2 above, each Party's total aggregate liability in respect of all Losses incurred under or in connection with the Contract as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed in relation to any Default or Authority Cause (as the case may be) occurring in the relevant Contract Year, the higher of one hundred thousand pounds (£100,000) and a sum equal to one hundred and twenty five percent (125%) of the Estimated Management Charge for such relevant Contract Year. For the avoidance of doubt, the Parties acknowledge and agree that

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this Clause B19.3 shall not limit the Supplier's liability under any Enabling Agreement and that the Supplier's liability in relation to an Enabling Agreement shall be as set out in the relevant Enabling Agreement.

**B19.4 [Drafting Note: This is the liability cap for the Enabling Agreement.]**

Subject to Clauses B19.1 and B19.2 above, the total aggregate liability of each of the Enabling Authority and the Supplier in respect of all Losses incurred under or in connection with the Enabling Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed in relation to any Default or Authority Cause (as the case may be) occurring in the relevant Contract Year, the higher of one hundred thousand pounds (£100,000) and a sum equal to half of one per cent (0.5%) of the Estimated Total Charges for such relevant Contract Year.

B19.5 Subject to Clause B19.1 above, neither Party shall be liable to the other Party for any:

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

B19.6 Subject to Clauses B19.3 and B19.4 above, and notwithstanding Clause B19.5, the Supplier acknowledges that the Client may, amongst other things, recover from the Supplier the following Losses incurred by the Client to the extent that they arise as a result of a Default by the Supplier:

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

B19.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with the Contract.

B19.8 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clauses B19.3 and B19.4.

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B19.9 For the avoidance of doubt, the Parties acknowledge and agree that this Clause B19 shall not limit the Supplier's liability to an Enabling Authority under any Enabling Agreement and the Supplier's liability under an Enabling Agreement shall be as provided for in that Enabling Agreement only.

B19.10 Neither Party shall be subject to "double recovery" of damages or liability under the Contract.

## **B20 Termination on Material Default**

B20.1 Without prejudice to any of its other rights or remedies and without any liability to the Client, the Client may terminate the Contract for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of the Client, capable of remedy; and/or
- (b) the Supplier commits a Default, including a material Default, which in the opinion of the Client is remediable but has not remedied such Default to the satisfaction of the Client;
- (c) the Supplier commits repeated breaches of its obligations under the Contract (whether of the same or different obligations and regardless of whether these breaches are remedied), the cumulative effect of which is a material breach of the Contract;
- (d) the representation and warranty given by the Supplier pursuant to Clause B17 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable; as a result of any Defaults;
- (e) the Client has expressly identified to terminate the Contract for material Default, including the following [xx], [xx]. **[Drafting Note: The final list of such Clauses will be listed in this Clause B20.1]**
- (f) the Contract is conditional upon the Supplier procuring the Parent Company Guarantee, and the Guarantor withdraws the Parent Company Guarantee for any reason whatsoever;
- (g) the Supplier does not provide the Cyber Essential's certificate in accordance with Schedule 2 (Services);
- (h) the Supplier commits a Critical Service Level Failure; and/or
- (i) the Supplier has, at the time of award of the Contract following completion of the Invitation to Tender process, been in one of the situations set out in Regulation 57(1) of the Public Contracts Regulations 2015, including in accordance with Regulation 57(2).

## **B21 Termination in Relation to Financial Standing**



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B21.1 Without any liability to the Client, the Client may terminate the Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Client there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

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

## **B22 Termination on Insolvency**

B22.1 Without any liability to the Client, the Client may terminate the Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

## **B23 Termination on Change of Control**

B23.1 The Supplier shall notify the Client immediately if the Supplier undergoes or is intending to undergo a Change of Control and provided this does not contravene any Law shall notify the Client immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation or has taken place. Without any liability to the Client, the Client may terminate the Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

## **B24 Termination due to no fault of the Supplier**

B24.1 The Client shall have the right to terminate the Contract at any time after the first Contract Year by giving at least three (3) months of a Termination Notice to the Supplier.

B24.2 The Client may terminate the Contract if the Contract has been subjected to substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015.

B24.3 The Client may terminate the Contract if the Contract should not have been awarded to the Supplier because of a serious infringement of the obligations under the European Treaties and the Public Contracts Directive that has

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been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

## **B25 Termination in Relation to the Contract**

B25.1 Save as otherwise stated in the Contract, the Enabling Agreements will terminate on the same date as the date of termination of the Contract.

## **B26 Termination in Relation to Benchmarking**

B26.1 Without any liability to the Client, the Client may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Schedule 10 (Value for Money).

## **B27 Termination in Relation to Variation**

B27.1 Without any liability to the Client, the Client may terminate the Contract by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Contract.

## **B28 Supplier Termination Right due to Customer Cause for Failure to Pay**

B28.1 The Supplier may, by issuing a Termination Notice to the Enabling Authority, terminate the Enabling Contract if the Enabling Authority fails to pay an undisputed sum due to the Supplier under the Enabling Agreement by the date that is one hundred and fifty (150) days from the due date for such sum.

B28.2 A termination under Clause B28.1 above shall not be effective or apply:

- (a) unless the Supplier provides appropriate details of the relevant sum that it is due in such Termination Notice;
- (b) unless the Supplier, after the date that is eighty (80) days from the due for such unpaid undisputed sum, gives at least twenty one (21) days' written notice (of the Enabling Authority's failure to pay) to the Enabling Authority prior to the end of such one hundred and fifty (150) day period;
- (c) unless the Supplier escalates the issue of the unpaid undisputed sum in accordance with the Dispute Resolution Procedure, including Mediation;
- (d) if the Enabling Authority pays the undisputed sum at any time prior to the end of such one hundred and fifty (150) period.

B28.3 The Supplier shall not suspend the supply of the Services for failure of the Enabling Authority to pay undisputed sums of money (whether in whole or in part).

## **B29 Termination for Force Majeure**

B29.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate the Contract in accordance with Clause B32 (Force Majeure).

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### **B30 Partial Termination and Partial Suspension**

B30.1 Where the Client has the right to terminate the Contract, the Client shall be entitled to terminate or suspend all or part of the Contract.

### **B31 Consequences of Termination**

B31.1 Notwithstanding the service of a notice to terminate the Contract, the Supplier shall continue to fulfil its obligations under the Contract until the date of expiry or termination of the Contract or such other date as required under this Clause B31.

B31.2 Within ten (10) Working Days of the date of termination or expiry of the Contract, the Supplier shall return to the Client any and all of the Client's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Client, and any other information and all copies thereof owned by the Client, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under the Contract or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Client and is reasonably necessary for such compliance).

B31.3 Termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Contract prior to termination or expiry.

B31.4 Termination or expiry of the Contract shall be without prejudice to the survival of any provision of the Contract which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of the Contract, including the provisions of: **[TBC] [Drafting Note: List of clauses and/or Schedules / Annexes to be set out prior to signature of the Contract.]**

B31.5 Where:

(a) the Client terminates (in whole or in part) the Contract under Clause B24;  
or

(b) the Supplier terminates the Contract pursuant to Clause B28 above,  
the Client shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Client may require, reasonably and actually incurred by the Supplier as a result of termination without cause under Clause B24 above.

B31.6 The Client shall not be liable under Clause B31.5 above to pay any sum which:

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- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated.

B31.7 In respect of a termination in relation to a Force Majeure Event, the costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause B29 above.

B31.8 For any expiry or termination under the Contract or an Enabling Agreement, the Supplier shall comply with its exit obligations as set out in Schedule 17 (Exit).

## **B32 Force Majeure**

B32.1 Subject to the remainder of this Clause B32 (and, in relation to the Supplier, subject to its compliance with any obligations in business continuity and disaster recovery under the Contract), a Party may claim relief under this Clause B32 from liability for failure to meet its obligations under the Contract 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 the Contract 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.

B32.2 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.

B32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause B32 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.

B32.4 Subject to Clause B32.5 below, 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

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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.

B32.5 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.

B32.6 Where, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
  - (i) the other Party shall not be entitled to exercise any rights to terminate the Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
  - (ii) the Supplier shall not be liable for any Default and the Client shall not be liable for any Client Cause arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with the Contract:
  - (i) the Client shall not be entitled:
    - A) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause B33.1(a)(i) and Clause B33.1(a)(ii) as a result of such failure; and
    - B) to receive Service Credits or withhold and retain any of the Booking Fees to the extent caused by the Force Majeure Event; and
  - (ii) the Supplier shall be entitled to receive payment of the Booking Fees (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

B32.7 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 the Contract.

B32.8 Relief from liability for the Affected Party under this Clause B32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be

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unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under Clause B32.7 above.

### **B33 Customer Remedies for Default**

#### **B33.1 Remedies**

- (a) Without prejudice to any other right or remedy of the Client howsoever arising, if the Supplier commits any Default of the Contract then the Client (whether or not any part of the Services have been Delivered) do any of the following:
  - (i) at the Client's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Client's instructions;
  - (ii) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with the Contract;
  - (iii) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
    - A) instruct the Supplier to comply with the Rectification Plan Process;
    - B) suspend the Contract (whereupon the relevant provisions of Clause B30 above shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
    - C) without terminating or suspending the whole of the Contract, terminate or suspend the Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause B30 above shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;

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- (b) Where the Customer exercises any of its step-in rights under Clauses B33.1(a)(iii)B or B33.1(a)(iii)C, the Client shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Client (including any reasonable administration costs) in respect of the supply of any part of the Services by the Client or a third party and provided that the Client its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

### **B33.2 Rectification Plan Process**

- (a) Where the Client has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause B33.1(a)(iii)A:
  - (i) the Supplier shall submit a draft Rectification Plan to the Client for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Client's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Client's request for a draft Rectification Plan.
  - (ii) the draft Rectification Plan shall set out:
    - A) full details of the Default that has occurred, including a root cause analysis;
    - B) the actual or anticipated effect of the Default; and
    - C) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- (b) The Supplier shall promptly provide to the Client any further documentation that the Client 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, as such expert is identified and agreed by the Parties.
- (c) The Client 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:
  - (i) is insufficiently detailed to be capable of proper evaluation;
  - (ii) will take too long to complete;
  - (iii) will not prevent reoccurrence of the Default; and/or

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- (iv) will rectify the Default but in a manner which is unacceptable to the Client.
- (d) The Client shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Client rejects the draft Rectification Plan, the Client 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 Client for review within five (5) Working Days (or such other period as agreed between the Parties) of the Client's notice rejecting the first draft.
- (e) If the Client consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

### **B34 Supplier Relief due to Client Cause**

B34.1 If the Supplier has failed to:

- (a) achieve a Milestone by its Milestone Date;
- (b) provide the Services in accordance with the Service Levels;
- (c) comply with its obligations under the Contract,

(each a **"Supplier Non-Performance"**), and can demonstrate that the Supplier Non-Performance would not have occurred but for a Client Cause, then (subject to the Supplier fulfilling its obligations in Clause [xx] (supplier notification of Client Cause)):

- (i) the Supplier shall not be treated as being in breach of the Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (ii) the Client shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause B20, except for termination due to no fault of the Supplier under Clause B24;
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Client Cause;
  - B) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Client Cause;



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C) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Client Cause; and/or

(iv) where the Supplier Non-Performance constitutes a Service Level Failure:

A) the Supplier shall not be liable to accrue Service Credits;

B) the Customer shall not be entitled to any Compensation for Critical Service Level Failure; and

C) the Supplier shall be entitled to invoice for the Booking Fees for the provision of the relevant Services affected by the Client Cause,

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

B34.2 In order to claim any of the rights and/or relief referred to in Clause B34.1 above, the Supplier shall:

(a) comply with its obligations under Clause [xx] (supplier notification of Client Cause); and

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

(i) the Supplier Non-Performance;

(ii) the Client Cause and its effect on the Supplier's ability to meet its obligations under the Contract; and

(iii) the relief claimed by the Supplier.

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B34.3 Following the receipt of a Relief Notice, the Client shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Client Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Client Cause and its entitlement to relief, consulting with the Supplier where necessary.

B34.4 Without prejudice to the Supplier's obligation to provide the Services, if a Dispute arises as to:

(a) whether a Supplier Non-Performance would not have occurred but for a Client Cause; and/or

(b) 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.

B34.5 Any Variation that is required to the Implementation Plan or to the Booking Fees pursuant to this Clause 34 shall be implemented in accordance with the Variation Procedure.

### **B35 Compliance and General Provisions**

#### **B35.1 Health and Safety**

(a) The Supplier shall perform its obligations under the Contract (including those in relation to the Services) in accordance with:

(i) all applicable Law regarding health and safety; and

(ii) the Client's health and safety policy (as provided to the Supplier from time to time) whilst at the Client Premises.

(b) Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Client Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract.

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

#### **B35.2 Equality and Diversity**

(a) The Supplier shall:

(i) perform its obligations under the Contract (including those in relation to provision of the Services) in accordance with:

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- A) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - B) any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Client 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).

**B35.3 Official Secrets Act and Finance Act**

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

**B35.4 Environmental Requirements**

- (a) The Supplier shall, when working on the Sites, perform its obligations under the Contract in accordance with the Environmental Policy of the Client.
- (b) The Client shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

**B35.5 Assignment and Novation**

- (a) The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under the Contract or any part of it without Approval.
- (b) The Client may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under the Contract or any part thereof to:
- (i) any other Enabling Authority; or
  - (ii) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
  - (iii) any private sector body which substantially performs the functions of the Client,

and the Supplier shall, at the Client's request, enter into a novation agreement in such form as the Client shall reasonably specify in order to enable the Client to exercise its rights pursuant to this Clause B35.5(b).

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- (c) A change in the legal status of the Client such that it ceases to be a Contracting Body shall not, subject to Clause B35.5(d) below affect the validity of the Contract and this Contract shall be binding on any successor body to the Client.
- (d) If the Client assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under the Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Client (both "Transferee" in the rest of this Clause) the right of termination of the Client in Clause B22 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause B22 (Termination on Insolvency) and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee).

#### **B35.6 Waiver and Cumulative Remedies**

- (a) The rights and remedies under the Contract may be waived only by notice in accordance with Clause B35.13 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under the Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.
- (b) Unless otherwise provided in the Contract, rights and remedies under the Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

#### **B35.7 Relationship of the Parties**

- (a) Except as expressly provided otherwise in the Contract, nothing in the Contract, nor any actions taken by the Parties pursuant to the Contract, 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.

#### **B35.8 Prevention of the Fraud and Bribery**

- (a) The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date of the Contract:
  - (i) 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
  - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or

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otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

(b) The Supplier shall not during the Contract Period:

- (i) commit a Prohibited Act; and/or
- (ii) do or suffer anything to be done which would cause the Client or any of the Client'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.

(c) The Supplier shall during the Contract Period:

- (i) 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;
- (ii) keep appropriate records of its compliance with its obligations under Clause B35.8(c)(i) above and make such records available to the Client on request;
- (iii) if so required by the Client, within twenty (20) Working Days of the Commencement Date of the Contract, and annually thereafter, certify to the Client in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as the Client may reasonably request; and
- (iv) have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Client on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

(d) The Supplier shall immediately notify the Client in writing if it becomes aware of any breach of Clause B35.8(a) above, or has reason to believe that it has or any of the Supplier Personnel have:

- (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (ii) 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
- (iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the

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Contract or otherwise suspects that any person or Party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

- (e) If the Supplier makes a notification to the Client pursuant to Clause B35.8(d) above, the Supplier shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with Clause A24 above.
- (f) If the Supplier breaches Clause B35.8(d) above, the Client may by notice:
  - (i) require the Supplier to remove from performance of the Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - (ii) immediately terminate the Contract for material Default of the Supplier.
- (g) Any notice served by the Client under Clause B35.8(d) above shall specify the nature of the Prohibited Act, the identity of the Party who the Client believes has committed the Prohibited Act and the action that the Client has elected to take (including, where relevant, the date on which the Contract shall terminate).

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#### **B35.9 Severance**

- (a) If any provision of the Contract (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 the Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of the Contract shall not be affected.
- (b) In the event that any deemed deletion under Clause B35.9(a) above is so fundamental as to prevent the accomplishment of the purpose of the Contract or materially alters the balance of risks and rewards in the Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend the Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in the Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- (c) If the Parties are unable to resolve the Dispute arising under this Clause B35.9 within twenty (20) Working Days of the date of the notice given pursuant to Clause B35.9(b) above the Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if the Contract is terminated pursuant to this Clause 35.9.

#### **B35.10 Further Assurances**

- (a) Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

#### **B35.11 Entire Agreement**

- (a) The Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- (b) Neither Party has been given, nor entered into the Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in the Contract.
- (c) Nothing in this Clause B35.11 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **B35.12 Third Party Rights**

- (a) The provisions of paragraphs [xx] [xx] of [Schedules] (together “**Third Party Provisions**”) confer benefits on persons named in such provisions

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other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CTRPA. **[Drafting Note: This will be populated prior to signature of the Contract.]**

- (b) Subject to Clause B35.12(a) above Clause A6 above, a person who is not a Party to the Contract has no right under the CTRPA to enforce any term of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- (c) No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Client, which may, if given, be given on and subject to such terms as the Client may determine.
- (d) Any amendments or modifications to the Contract may be made, and any rights created under Clause B35.12(a) above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

### B35.13 Notices

- (a) Except as otherwise expressly provided within the Contract, any notices sent under the Contract must be in writing. For the purpose of this Clause B35.13, an e-mail is accepted as being "in writing".
- (b) Subject to Clause B35.13(c) below, the following table sets out the method by which notices may be served under the Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses B35.13(c), and B35.13(d) below)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will	Properly addressed and delivered as evidenced by signature of a delivery receipt



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	occur at 9.00am on the next Working Day	
Royal Mail Signed For™ 1 <sup>st</sup> 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

(c) 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 Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause B35.13(b) above:

(i) any Termination Notice;

(ii) any notice in respect of:

A) partial termination, suspension or partial suspension (Clause B30);

B) waiver (Clause B35.6);

C) Default or Customer Cause; and

D) any Dispute Notice.

(iii) Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause B35.13(c) above 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™ 1<sup>st</sup> Class delivery (as set out in the table in Clause B35.13 above) or,

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if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- (iv) This Clause B35.13 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).
- (v) For the purposes of this Clause B35.13, the address and email address of each Party shall be the address and email address set out in: **[TBC]**.

#### **B35.14 Dispute Resolution**

- (a) The Parties shall resolve Disputes arising out of or in connection with the Contract in accordance with the Dispute Resolution Procedure.
- (b) The Supplier shall continue to provide the Services in accordance with the terms of the Contract until a Dispute has been resolved.

#### **B35.15 Governing Law and Jurisdiction**

- (a) The Contract 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.
- (b) Subject to Clause 35.14 above and Schedule 14 (Governance) (including the Client's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with the Contract or its subject matter or formation.

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## SCHEDULE 1 – DEFINITIONS

**[Drafting Note: The definitions are still a “working draft” and need further work to make them align fully with the Contract, Schedules and the Enabling Agreements. In addition, various provisions have come from the CCS model framework / call off model and these will need to be tailored to the Contract / Enabling Agreement model, which means many of the capitalised terms in those Schedules will need to align with the definitions in this Schedule 1 (and not the other way around).]**

### 1. Definitions and Interpretation

- 1.1. In accordance with Clause B1, in the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Achieve”</b>	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved", "Achieving" and "Achievement" shall be construed accordingly;
<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 Clauses”</b>	means the additional Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other additional Clauses set out in the Order Form or elsewhere in this Call Off Contract;
<b>“Admin Fees”</b>	means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
<b>“Admin Fees”</b>	means the charges described in paragraph 5 of Schedule 13 (Management Information);
<b>“Affected Party”</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>“Affiliates”</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 of that body corporate from time to time;
<b>“Alternative Clauses”</b>	means the alternative Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other alternative Clauses set out in the Order Form or elsewhere in this Call Off Contract;

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Annual Review”</b>	as set out in clause [ ] (Annual Review);
<b>“Approval”</b>	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
<b>“Approved Sub-Licensee”</b>	means any of the following: a Central Government Body; any third party providing services to a Central Government Body; and/or any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
<b>“Audit”</b>	means an audit carried out pursuant to Clause <b>Error! Reference source not found.</b> (Records, Audit Access and Open Book Data);
<b>“Audit Report”</b>	means a report summarising the testing completed and the actions arising following an Audit;
<b>“Auditor”</b>	means: the Customer’s internal and external auditors; the Customer’s statutory or regulatory auditors; the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office HM Treasury or the Cabinet Office any party formally appointed by the Customer to carry out audit or similar review functions; and successors or assigns of any of the above;
<b>“Authority”</b>	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>“Authority Cause”</b>	means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Supplier;
<b>“Authority Personal Data”</b>	means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Supplier;
<b>“Client Representative”</b>	means the representative appointed by the Client from time to time in relation to the Contract;
<b>“Authority's</b>	means all Authority Personal Data and any information, however it is

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Confidential Information”</b>	conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority and/or Other Contracting Bodies, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential;
<b>“Bank of England”</b>	means the central bank of the United Kingdom;
<b>“BCDR Plan”</b>	means the plan prepared pursuant to Clause A30 of the Contract, as may be amended from time to time;
<b>“BCDR Services”</b>	means the business continuity services and disaster recovery services set out in the BCDR Plan;
<b>“Booking Fees”</b>	means the booking fees identified in Schedule 4 (Pricing and Invoicing);
<b>“Branding Guidance”</b>	means the Authority's guidance in relation to the use of branding available at <a href="http://gcloud.civilservice.gov.uk/files/2012/10/supplier-guides-April-2012.pdf">http://gcloud.civilservice.gov.uk/files/2012/10/supplier-guides-April-2012.pdf</a>
<b>“Business Continuity Services”</b>	has the meaning given to it in paragraph [ ] of Call Off Schedule 9 (Business Continuity and Disaster Recovery);
<b>“Call Off Agreement”</b>	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and/or Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
<b>“Call Off Commencement Date”</b>	means the date of commencement of this Call Off Contract set out in paragraph 1.1 of the Order Form;
<b>“Call Off Contract”</b>	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;
<b>“Call Off Contract Charges”</b>	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
<b>“Call Off Contract Period”</b>	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed a maximum duration of [four (4)] years;
<b>“Call Off Contract Year”</b>	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
<b>“Call Off Expiry Date”</b>	means: the end date of the Call Off Initial Period or any Call Off Extension Period;

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	or if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
<b>“Call Off Extension Period”</b>	means the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;
<b>["Call Off Guarantee”</b>	means a deed of guarantee in favour of a Contracting Body in the form set out in Framework Schedule 13 (Guarantee) and granted pursuant to Clause 3 of the Template Call Off terms;]
<b>["Call Off Guarantor”</b>	means the person, in the event that a Call Off Guarantee is required under this Call Off Contract, acceptable to the Customer to give a Call Off Guarantee;
<b>“Call Off Initial Period”</b>	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form;
<b>“Call Off Procedure”</b>	means the process for awarding a Call Off Agreement pursuant to Clause <b>Error! Reference source not found.</b> (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
<b>“Call Off Schedule”</b>	means a schedule to this Call Off Contract;
<b>“Call Off Terms”</b>	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Goods and/or Services, together with the Call Off Schedules hereto;
<b>“CEDR”</b>	means the Centre for Effective Dispute Resolution;
<b>“Central Government Body”</b>	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:  Government Department;  Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  Non-Ministerial Department; or  Executive Agency;
<b>“Central Government Departments”</b>	Means [xxx], as may change from time to time.
<b>“Change in Law”</b>	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date;
<b>“Change of Control”</b>	means a change of control within the meaning of Section 450 of the

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	Corporation Tax Act 2010;
<b>“Charges”</b>	means the gross total spend, including all booking fees, payable by the Enabling Authorities in respect of the provision of the Services under or in connection with the Enabling Agreements (net of VAT) from time to time;
<b>“Charging Structure”</b>	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
<b>“Client”</b>	mean the party identified as such in the Form of Agreement;
<b>“Client Premises”</b>	means the Client’s location (where part of the Services are to be supplied, as set out in the Specification of Requirements).
<b>“Commencement Date”</b>	means in relation to the Contract, the date of execution of the Contract; and in relation to an Enabling Agreement, the date of execution of such Enabling Agreement
<b>“Commercially Sensitive Information”</b>	means the Supplier’s Confidential Information listed in Schedule 12 (Commercially Sensitive Information) comprised of commercially sensitive information: <ul style="list-style-type: none"> <li>relating to the Supplier, its IPR or its business or information 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; and</li> <li>that constitutes a trade secret;</li> </ul>
<b>“Commissions”</b>	means any commissions paid or payable to the Supplier from third parties in respect of the provision of the Services under or in connection with the Enabling Agreements;
<b>“Comparable Supply”</b>	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
<b>“Compensation for Critical Service Level Failure”</b>	has the meaning given to it in Clause <b>Error! Reference source not found.</b> (Critical Service Level Failure);
<b>“Complaint”</b>	means any formal written complaint raised by a Contracting Body in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause <b>Error! Reference source not found.</b> (Complaints Handling);
<b>“Confidential Information”</b>	means all Information: <ul style="list-style-type: none"> <li>(a) however it is conveyed or on whatever media it is stored;</li> <li>(b) which comes (or has come) to the attention of or into the possession of a Party before, on or after execution of the Contract; and</li> <li>(c) which has been designated as confidential by either Party in writing or which ought to be considered as confidential (whether or not it is marked at the time of provision to show that it is</li> </ul>

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	<p>imparted in confidence);</p> <p>(d) including but not limited to Information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;</p> <p>(e) and which Information is not:</p> <p>(i) in the public domain at the time of disclosure (otherwise then by breach of Clause D4 (Confidential Information); or</p> <p>(ii) received from a third Party (who has lawfully acquired it) without restriction as to its disclosure; or</p> <p>(iii) independently developed without access to the Confidential Information</p>
<b>“Continuous Improvement Plan”</b>	means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
<b>“Contract”</b>	means this written agreement between the Client and the Contractor consisting of these Clauses and any attached Schedules.
<b>“Contract Period”</b>	<p>means the period from the Commencement Date to:</p> <p>(a) the date of expiry set out in Clause A2 (Initial Contract Period); or</p> <p>(b) following an extension pursuant to Clause E6 (Extension of Initial Contract Period), the date of expiry of the extended period;</p> <p>or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.</p>
<b>“Contract Year”</b>	means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
<b>“Contracting Authority”</b>	means any Contracting Authority as defined in Regulation 3 of the Public Contracts Regulations 2006.
<b>“Contracting Bodies”</b>	means bodies listed in paragraph [VI.3] of the OJEU Notice and “Contracting Body” shall be construed accordingly;
<b>“Contracting Body”</b>	means the Authority, the Customer and any other bodies listed in paragraph [VI.3] of the OJEU Notice;
<b>“Contractor [i.e. Supplier]”</b>	means the person, firm or company with whom the Client enters into the Contract.
<b>“Control”</b>	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and “Controlled” shall be construed accordingly;



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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Conviction”</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
<b>“Costs”</b>	<p>means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:</p> <ul style="list-style-type: none"> <li>the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>base salary paid to the Supplier Personnel;</li> <li>employer’s national insurance contributions;</li> <li>pension contributions;</li> <li>car allowances;</li> <li>any other contractual employment benefits;</li> <li>staff training;</li> <li>work place accommodation;</li> <li>work place IT equipment and tools reasonably necessary to provide the Goods and/or Services (but not including items included within limb (b) below); and</li> <li>reasonable recruitment costs, as agreed with the Contracting Bodies under any Call Off Agreements;</li> </ul> </li> <li>costs incurred in respect of those Supplier Assets which are detailed on the Registers (“Supplier Assets” and “Register” shall have the meaning given to them under Call Off Schedule 1 (Definitions)) and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Contracting Bodies or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</li> <li>operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;</li> </ul> <p>[Reimbursable Expenses to the extent these are incurred in delivering any Goods and/or Services where the Charges for those Goods and/or</p>

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	<p>Services are to be calculated on a Fixed Price or Firm Price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure);]</p> <p>but excluding:</p> <p>Overhead;</p> <p>financing or similar costs;</p> <p>maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Agreements whether in relation to Supplier Assets or otherwise;</p> <p>taxation;</p> <p>finances and penalties;</p> <p>amounts payable under the benchmarking provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking); and</p> <p>non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<b>“CPI”</b>	means the Consumer Prices Index as published by the Office of National Statistics ( <a href="http://www.statistics.gov.uk/instantfigures.asp">http://www.statistics.gov.uk/instantfigures.asp</a> );
<b>“Critical Service Level Failure”</b>	means any instance of critical service level failure specified in Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>“Crown”</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Crown Body”</b>	means any department, office or executive agency of the Crown;
<b>“CRTPA”</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>“Customer”</b>	means the customer(s) identified in the Order Form;
<b>“Customer Assets”</b>	means the Customer’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Goods and/or Services;
<b>“Customer Background IPR”</b>	<p>means:</p> <p>IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer’s Know-How,</p>

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	documentation, software, processes and procedures; IPRs created by the Customer independently of this Call Off Contract; and/or Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;
<b>“Customer Cause”</b>	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
<b>“Customer Data”</b>	means: the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer’s Confidential Information, and which: are supplied to the Supplier by or on behalf of the Customer; or the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or any Personal Data for which the Customer is the Data Controller;
<b>“Customer Premises”</b>	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Goods and/or Services (or any of them);
<b>“Customer Property”</b>	means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
<b>“Customer Representative”</b>	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
<b>“Customer Responsibilities”</b>	means the responsibilities of the Customer set out in the Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) and any other responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
<b>“Customer’s Confidential Information”</b>	means: all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR); any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	Customer's attention or into the Customer's possession in connection with this Call Off Contract; and  information derived from any of the above;
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation"</b>	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>"Deductions"</b>	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority;
<b>"Default Management Charge"</b>	has the meaning given to it in paragraph 6 of Schedule 13 (Management Information);
<b>"Delay"</b>	means:  a delay in the Achievement of a Milestone by its Milestone Date; or  a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
<b>"Delay Payments"</b>	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Delay Period Limit"</b>	shall be the number of days specified in Part A of Call Off Schedule 4: Implementation Plan, Customer Responsibilities and Key Personnel, for the purposes of [ ];
<b>"Deliverable"</b>	means an item or feature in the supply of the Goods and/or Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the

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	performance of this Call Off Contract;
<b>“Delivery”</b>	means, in respect of Goods, the time at which the Goods have been delivered and, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
<b>“Direct Award Criteria”</b>	means the award criteria to be applied for the direct award of Call Off Agreements for Goods and/or Services set out in Part A of Framework Schedule 6 (Award Criteria);
<b>“Disaster”</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and/or Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form or elsewhere in the Call Off Contract (for the purposes of this definition the “Disaster Period”)
<b>“Disaster Recovery Services”</b>	means the services embodied in the processes and procedures for restoring the provision of Goods and/or Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 9 (Business Continuity and Disaster Recovery);
<b>“Disclosing Party”</b>	has the meaning given to it in Clause [ ] (Confidentiality);
<b>“Dispute”</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 16.1(Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the dispute resolution procedure set out in Framework Schedule 18 (Dispute Resolution);
<b>“Documentation”</b>	means all documentation as: <ul style="list-style-type: none"> <li>is required to be supplied by the Supplier to the Customer under this Call Off Contract;</li> <li>would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Goods and/or Services;</li> <li>is required by the Supplier in order to provide the Goods and/or Services; and/or</li> </ul>

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	has been or shall be generated for the purpose of providing the Goods and/or Services;
<b>“DOTAS”</b>	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;
<b>“DPA”</b>	means the Data Protection Act 1998 as amended from time to time;
<b>“Due Diligence Information”</b>	means any information supplied to the Supplier by or on behalf of the Customer prior to the Framework Commencement Date;
<b>“Employee Liabilities”</b>	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> <li>redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>unfair, wrongful or constructive dismissal compensation;</li> <li>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;</li> <li>compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;</li> <li>claims whether in tort, contract or statute or otherwise;</li> <li>any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</li> </ul>
<b>“Employment</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Regulations”</b>	Regulations implementing the Acquired Rights Directive;
<b>“Enabled Authority”</b>	means the Central Government Department, Executive Agency or Non-Departmental Public Body named as entering into the Enabling Agreement with the Contractor.
<b>“Enabling Agreement”</b>	means a written agreement between the Authority and the Contractor including all Annexes to that agreement and any Clauses and Schedules of the Contract which it is said to contain.
<b>“Enabling Authority”</b>	[see above definition for Enabled Authority]
<b>“Environmental Information Regulations or EIRs”</b>	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;
<b>“Environmental Policy”</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>“Equivalent Goods and/or Services”</b>	means goods and/or services which the Supplier can supply which are the same or similar to the Goods and/or Services;
<b>“Estimated Year 1 Call Off Contract Charges”</b>	means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Order Form or elsewhere in this Call Off Contract;
<b>“Estimated Year 1 Management Charge”</b>	means the sum of £[XXXX] pounds estimated by the Authority to be payable to it by the Supplier as the total aggregate Management Charge from the Framework Commencement Date until the end of the first Contract Year;
<b>“Expedited Dispute Timetable”</b>	means the timetable set out in paragraph <b>Error! Reference source not found.</b> of Schedule 12 (Dispute Resolution Procedure);
<b>“Financial Distress Event”</b>	means the occurrence or one or more of the events listed in paragraph 3 of Schedule 16 (Financial Distress);
<b>“FOIA”</b>	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>“Force Majeure”</b>	means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:  acts, events, omissions, happenings or non-happenings beyond the

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	<p>reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;</p> <p>riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>acts of the Crown, local government or Regulatory Bodies;</p> <p>fire, flood or any disaster; and</p> <p>an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</p> <p>any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>any failure of delay caused by a lack of funds;</p>
<b>“Force Majeure Notice”</b>	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;
<b>“Former Supplier”</b>	means a supplier supplying the goods and/or services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Goods and/or Services (or any part of the Goods and/or Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“Framework”</b>	means the framework arrangements established by the Authority for the provision of the Goods and/or Services to Contracting Bodies by suppliers (including the Supplier) pursuant to the OJEU Notice;
<b>“Framework Commencement Date”</b>	means [insert date dd/mm/yyyy];
<b>“[Framework Guarantee”</b>	means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 13 (Framework Guarantee) granted pursuant to Clause [ ] (Guarantee);]
<b>“[Framework Guarantor”</b>	means any person acceptable to the Authority to give a Framework Guarantee;]
<b>“Framework Period”</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
<b>“Framework Price(s)”</b>	means the price(s) applicable to the provision of the Goods and/or Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);



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<b>“Framework Schedule”</b>	means a schedule to the Framework Agreement;
<b>“Framework Suppliers”</b>	means the suppliers (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
<b>“Fraud”</b>	means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>“Further Competition Award Criteria”</b>	means the award criteria set out in Part B of Framework Schedule 6 (Award Criteria);
<b>“Further Competition Procedure”</b>	means the further competition procedure described in paragraph [ ] of Framework Schedule 5 (Call Off Procedure);
<b>“Further Competition Procedure”</b>	means the award procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
<b>“General Anti-Abuse Rule”</b>	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;
<b>“General Change in Law”</b>	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;
<b>“Good Industry Practice”</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>“Goods and/or Services Requirements”</b>	means the requirements of the Authority or any other Contracting Body (as appropriate) for the Goods and/or Services from time to time;
<b>“Government”</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“HMRC”</b>	means Her Majesty’s Revenue and Customs;
<b>“Holding Company”</b>	has the meaning given to it in section 1159 of the Companies Act 2006;

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“ICT Policy”</b>	means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>“Impact Assessment”</b>	has the meaning given to it in Clause <b>Error! Reference source not found.</b> (Variation Procedure);
<b>“Implementation Plan”</b>	means the plan set out in the Order Form;
<b>“Implementation Hard Stop Dates”</b>	Has the meaning given to it in paragraph 2.1 of Schedule 7 (Implementation Schedule);
<b>“Implementation Services”</b>	Has the meaning given to it in paragraph 1.1 of Schedule 7 (Implementation Schedule);
<b>“Improvement Notice”</b>	means the notice issued by the Authority to the Supplier pursuant to Clause [ ] (Authority Remedies) which will detail how the Supplier shall improve the provision of the Goods and/or Services;
<b>“Improvement Plan”</b>	means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Goods and/or Services pursuant to Clause [ ] (Authority Remedies);
<b>“Information”</b>	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
<b>“Initial Contract Period”</b>	means the period from the Commencement Date to the date of expiry set out in Clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.
<b>“Insolvency Event”</b>	means, in respect of the Supplier or Framework Guarantor (as applicable): <ul style="list-style-type: none"> <li>a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or</li> </ul>

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	<p>notice of intention to appoint an administrator is given; or</p> <p>it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
<b>["Installation Works</b>	means all works which the Supplier is to carry out at the beginning of the Call Off Contract Period to install the Goods in accordance with the Order Form;]
<b>"Intellectual Property Rights or IPR"</b>	<p>means</p> <p>copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>"Invitation to Tender or ITT"</b>	has the meaning given to it in the recitals to this Framework Agreement;
<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;
<b>"Key Performance Indicators or KPIs"</b>	means the performance measurements and targets set out in Part B of Framework Schedule 1 (Goods and/or Services and Key Performance Indicators);
<b>"Key Personnel"</b>	means the individuals (if any) identified as such in Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel);
<b>"Key Role(s) "</b>	has the meaning given to it in Clause [ ] (Key Personnel);

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<b>“Key Sub-Contractor”</b>	means any Sub-Contractor: listed in Schedule 15 (Sub-Contractors); which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services; and/or with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;
<b>“Know-How”</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
<b>“KPI Target”</b>	means the acceptable performance level for a KPI as set out in relation to each KPI;
<b>“Law”</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
<b>“Legacy Goods and/or Services”</b>	means goods and/or services similar to the New Goods and/or Services and/or goods and/or services which interface with or are intended to interface with or be replaced by the New Goods and/or Services;
<b>“Losses”</b>	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>[“Lot”]</b>	means any of the [insert number of lots] lots specified in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) and "Lots" shall be construed accordingly;
<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 provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Management Charge"</b>	means the sum payable directly and/or indirectly by the Supplier to the Client being an amount equal to half of one per cent (0.5%) of the Charges in each Month throughout the Contract Period and thereafter until the expiry

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	or termination of all Enabling Agreements entered pursuant to the Contract;
<b>“Management Information or MI”</b>	means the management information specified in Framework Schedule 9 (Management Information);
<b>“MI Default”</b>	has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information);
<b>“MI Failure”</b>	means when an MI report: <ul style="list-style-type: none"> <li>contains any material errors or material omissions or a missing mandatory field; or</li> <li>is submitted using an incorrect MI reporting Template; or</li> <li>is not submitted by the reporting date(including where a Nil Return should have been filed);</li> </ul>
<b>“MI Report”</b>	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information);
<b>“MI Reporting Template”</b>	means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
<b>“Milestone”</b>	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
<b>“Milestone Date”</b>	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>“Milestone Payment”</b>	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
<b>“Minimum Standards of Reliability”</b>	means the minimum standards of reliability as set out in the OJEU Notice
<b>“Ministry of Justice Code”</b>	means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time;
<b>“MISO”</b>	means 'Management Information System Online'. An online portal located at <a href="https://miso.buyingsolutions.gov.uk">https://miso.buyingsolutions.gov.uk</a> provided by the Authority for collection and receipt of Management Information;
<b>“Month”</b>	means a calendar month and "Monthly" shall be interpreted accordingly;
<b>“New Goods and/or Services”</b>	means goods and/or services which a Contracting Body wishes to procure from a third party which are the same or similar to the Goods and/or Services;
<b>“Nil Return”</b>	has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Occasion of Tax Non-Compliance”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion;</li> </ul>
<b>“OJEU Notice”</b>	has the meaning given to it in Recital A;
<b>“Open Book Data”</b>	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>the Supplier’s Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs);</li> <li>operating expenditure relating to the provision of the Goods and/or Services including an analysis showing: <ul style="list-style-type: none"> <li>the unit costs and quantity of Goods and any other consumables and bought-in services;</li> <li>manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin; and</li> </ul> </li> <li>[Reimbursable Expenses];</li> <li>Overheads;</li> <li>all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</li> </ul>

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	<p>the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;</p> <p>confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>the actual Costs profile for each Service Period.</p>
<b>“Order”</b>	means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
<b>“Order Form”</b>	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods and/or Services to be supplied;
<b>“Other Contracting Bodies”</b>	means all Contracting Bodies except the Authority and “Other Contracting Body” shall be construed accordingly;
<b>“Other Supplier”</b>	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
<b>“Outline Implementation Plan”</b>	Means the plan set out in Annex 3 of the Enabling Agreements, which is populated in accordance with Schedule 7 (Implementation Schedule)
<b>“Over-Delivered Goods”</b>	has the meaning given to it in Clause [ ] (Over-Delivered Goods);
<b>“Overhead”</b>	means those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-Contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”;
<b>“Parent Company”</b>	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
<b>“Party”</b>	in respect of the Contract, means the Client or the Supplier and "Parties" shall mean both of them in this context; and in respect of the Enabling Agreement, means the Enabling Authority or the Supplier and "Parties" shall

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	mean both of them in this context;
<b>“PAYE”</b>	[ ]; [used in the TUPE Schedule and possibly elsewhere.]
<b>“Performance Monitoring Reports”</b>	has the meaning given to it in paragraph [ ] of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
<b>“Performance Monitoring System”</b>	has the meaning given to it in paragraph [ ] in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>“Personal Data”</b>	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
<b>“Pick List”</b>	as set out at Annex 2 of the Enabling Agreement;
<b>“Pounds Sterling”</b>	means the standard monetary unit of the United Kingdom;
<b>“PQQ Response”</b>	means, where the Framework Agreement has been awarded under the Restricted Procedure, the response submitted by the Supplier to the Pre-Qualification questionnaire issued by the Authority, and the expressions “Restricted Procedure” and “Pre-Qualification Questionnaire” shall have the meaning given to them in the Regulations;
<b>“Processing”</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and “Process” and “Processed” shall be interpreted accordingly;
<b>“Prohibited Act”</b>	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> <li>induce that person to perform improperly a relevant function or activity; or</li> <li>reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>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;</li> <li>committing any offence: <ul style="list-style-type: none"> <li>under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)</li> <li>under legislation or common law concerning fraudulent acts; or</li> <li>defrauding, attempting to defraud or conspiring to defraud the Customer; or</li> </ul> </li> <li>any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or</li> </ul>



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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	conduct had been carried out in the UK;
<b>“Project Specific IPR”</b>	means: Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same; but shall not include the Supplier Background IPR;
<b>“Recipient”</b>	has the meaning given to it in Clause [ ] (Confidentiality);
<b>“Rectification Plan”</b>	means the rectification plan pursuant to the Rectification Plan Process;
<b>“Rectification Plan Process”</b>	means the process set out in Clause B33.2 (Rectification Plan Process);
<b>“Registers”</b>	has the meaning given to in Call Off Schedule 10 (Exit Management);
<b>“Regulations”</b>	means the Public Contracts Regulations 2006 (as amended) and/or the Public Contracts (Scotland) Regulations 2012 (as amended) (as the context requires) as amended from time to time;
<b>“Regulatory Bodies”</b>	means those Crown bodies and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.
<b>“Reimbursable Expenses”</b>	has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
<b>“Related Supplier”</b>	means any person who provides goods and/or services to the Customer which are related to the Goods and/or Services from time to time;
<b>“Relevant Convictions”</b>	means a conviction that is relevant to the nature of the Services and/or relevant to the work of the Client as previously agreed between the Client and the Contractor.
<b>“Relevant Person”</b>	means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Body or other public body;
<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;
<b>“Relevant Supplier”</b>	means a third party bidding to provide New Goods and/or Services;
<b>“Relevant Tax Authority”</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<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 to it in Clause [ ] (Supplier Relief Due to Customer Cause);
<b>“Replacement Goods”</b>	means any goods which are substantially similar to any of the Goods and which the Customer receives in substitution for any of the Goods following the Call Off Expiry Date, whether those goods are provided by the Customer internally and/or by any third party;
<b>“Replacement Goods and/or Services”</b>	means any goods and/or services which are substantially similar to any of the Goods and/or Services and which are received in substitution for the Goods and/or Services following the expiry or termination of this Framework Agreement;
<b>“Replacement Services”</b>	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
<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>“Replacement Supplier”</b>	means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Authority from time to time; <b>“[Drafting Note: The definition of ‘Replacement Supplier’ needs to be amended to capture an appointment made by the Enabling Authority”].</b>
<b>“Reporting Date”</b>	means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
<b>“Requests for Information”</b>	means a request for information relating to this Framework Agreement or the provision of the Goods and/or Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
<b>“Restricted Countries”</b>	shall have the meaning given to it in Clause [ ] (Protection of Personal Data);
<b>“Satisfaction Certificate”</b>	means the certificate materially in the form of the document contained in Call Off Schedule 5 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
<b>“Schedule”</b>	means a Schedule attached to, and forming part of, the Contract.
<b>“Security Management Plan”</b>	means the Supplier's security management plan prepared pursuant to paragraph [ ] of Call Off Schedule 8 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph [ ]

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	of Call Off Schedule 8 (Security) and as updated from time to time;
<b>“Security Policy”</b>	means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>“Security Policy Framework”</b>	the HMG Security Policy Framework <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf</a> ;
<b>“Self Audit Certificate”</b>	means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause [ ] (Records, Audit Access and Open Book Data);
<b>“Service Credit Cap”</b>	has the meaning given to it in Paragraph [ ] of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)
<b>“Service Credits”</b>	means any service credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>“Service Failure”</b>	means an unplanned failure and interruption to the provision of the Goods and/or Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of the Goods and/or Services in the future;
<b>“Service Level Failure”</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
<b>“Service Level Performance Criteria”</b>	has the meaning given to it in paragraph [ ] of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>“Service Level Performance Measure”</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>“Service Level Threshold”</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>“Service Levels”</b>	means any service levels applicable to the provision of the Goods and/or Services under this Call Off Contract specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>“Service Period”</b>	has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Contracting Body in a Call Off Agreement between that Contracting Body and the Supplier;
<b>“Service Transfer”</b>	means any transfer of the Goods and/or Services (or any part of the Goods and/or Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Service Transfer Date”</b>	means the date of a Service Transfer;
<b>“Services”</b>	shall have the meaning set out in Part A of the Contract;
<b>“Sites”</b>	means: any premises (including the Customer Premises, the Supplier’s premises or third party premises): from, to or at which: the Goods and/or Services are (or are to be) provided; or the Supplier manages, organises or otherwise directs the provision or the use of the Goods and/or Services.
<b>“Specific Change in Law”</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>“Staff”</b>	means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.
<b>“Staffing Information”</b>	has the meaning give to it in Call Off Schedule 11 (Staff Transfer);
<b>“Standards”</b>	means: any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; any standards detailed in the specification in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators); any standards detailed by the Contracting Body in the Call Off Agreement following a Further Competition Procedure or agreed between the Parties from time to time; any relevant Government codes of practice and guidance applicable from time to time.
<b>“Statement of Requirements”</b>	means a statement issued by the Authority or any Other Contracting Body detailing its Goods and/or Services Requirements issued in accordance with the Call Off Procedure;
<b>“Sub-Contract”</b>	means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services (or any part thereof) or to provide facilities or services necessary for the provision of the Goods and/or

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	Services (or any part thereof) or necessary for the management, direction or control of the provision of the Goods and/or Services or any part thereof;
<b>“Sub-Contractor”</b>	means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;  [any third party with whom:  the Supplier enters into a Sub-contract; or a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;]
<b>“Supplier”</b>	means the party identified as such in the Form of Agreement and who is also identified as the Supplier under each Enabling Agreement signed in connection with the Contract;
<b>“Supplier Action Plan”</b>	means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
<b>“Supplier Assets”</b>	means all assets and rights used by the Supplier to provide the Goods and/or Services in accordance with this Call Off Contract but excluding the Customer Assets;
<b>“Supplier Background IPR”</b>	means  Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or  Intellectual Property Rights created by the Supplier independently of this Call Off Contract,
<b>“Supplier Equipment”</b>	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
<b>“Supplier Non-Performance”</b>	has the meaning given to it in Clause B34 (Supplier Relief Due to Customer Cause);
<b>“Supplier Personnel”</b>	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Framework Agreement

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	or any Call Off Agreements;
<b>“Supplier Personnel”</b>	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 Profit"]</b>	means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Call Off Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Agreements for the relevant period;
<b>["Supplier Profit Margin"]</b>	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreements and expressed as a percentage;
<b>“Supplier Representative”</b>	means the representative appointed by the Supplier named in the Order Form;
<b>“Supplier's Confidential Information”</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier’s attention or into the Supplier’s possession in connection with this Call Off Contract; information derived from any of the above.
<b>"Supporting Documentation"</b>	means sufficient information in writing to enable the Enabling Authority to reasonably to assess whether the Charges or Booking Fees, as applicable due from the Enabling Authority under the Enabling Agreement detailed in the information are properly payable.
<b>“Template Call Off Terms”</b>	means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
<b>“Template Order Form”</b>	means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
<b>“Tender”</b>	means the tender submitted by the Supplier to the Authority on a copy of which is set out in Framework Schedule 20 (Tender);
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
<b>“Test Issue”</b>	means any variance or non-conformity of the Goods and/or Services or Deliverables from their requirements as set out in the Call Off Contract;

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
<b>“Test Plan”</b>	means a plan for the Testing of the Deliverables; and setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 4 of Call of Schedule 5 (Testing);
<b>“Test Strategy”</b>	means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 5 (Testing);
<b>“Tests and Testing”</b>	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in this Call Off Contract and “Tested” shall be construed accordingly;
<b>“Third Party IPR”</b>	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Goods and/or Services;
<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>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
<b>“Undelivered Goods”</b>	has the meaning given to it in Clause [ ] (Goods);
<b>“Undelivered Services”</b>	has the meaning given to it in Clause [ ] (Services);
<b>“Undisputed Sums Time Period”</b>	has the meaning given to it Clause [ ] (Termination of Customer Cause for Failure to Pay);
<b>“Valid Invoice”</b>	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph [ ] (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
<b>“Variation”</b>	has the meaning given to it in Clause [ ] (Variation Procedure);
<b>“Variation Form”</b>	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 19 (Variation Form);
<b>“Variation Procedure”</b>	means the procedure for carrying out a Variation as set out in Clause B8 (Variation Procedure);
<b>“VAT”</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>“Warranty Period”</b>	means, in relation to any Goods, the warranty period specified in the Order Form;
<b>“Worker”</b>	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy

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<b><u>Terms</u></b>	<b><u>Definitions</u></b>
	Note 0712 – Tax Arrangements of Public Appointees <a href="https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees">https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees</a> applies in respect of the Services.
<b>“Working Day”</b>	means any Day other than a Saturday or Sunday or public holiday in England and Wales.



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## **SCHEDULE 2 - SERVICES**

**[Drafting Note: There are 4 separate Schedule 2s set out in the ITT documentation. The relevant Schedule 2 will be added here in this Contract depending on which Services have been awarded to the Supplier under this tender process.]**

**[Drafting Note: At the time an Enabling Authority signs the Enabling Agreement, it will use the Pick List set out in Annex 2 (Pick List) of the Enabling Agreement to select which of the Services set out in Schedule 2 it wishes to receive.]**

**[Drafting Note: Please note that a separate exercise will need to be carried out after the issue of the ITT but prior to signature of the Contract to ensure the Services descriptions in each Schedule 2 aligns with the definitions in Schedule 1 (Definitions), that the cross-references and numbering are correct, and that there are no conflicts between the provisions and processes in Schedule 2 and those that may be set out elsewhere in the Contract or the Enabling Agreement.]**

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### **SCHEDULE 3 - SERVICE LEVELS AND SERVICE CREDITS**

**[Drafting Note: This Schedule is still a “working draft”. Please note that a separate exercise will need to be carried out after the issue of the ITT but prior to signature of the Contract to ensure that: (1) the content aligns with the new Contract / Enabling model; (2) the content of this Schedule aligns with and uses the definitions in Schedule 1 (Definitions); (3) that the cross-references and numbering are correct; and (4) there are no conflicts between the provisions and processes in this Schedule and those that may be set out elsewhere in the Contract, other Schedules and/or the Enabling Agreement.]**

**[Drafting Note: The Client’s Service Level / Service Credit table has been added to this Schedule.]**

#### **1. SCOPE**

- 1.1. This Schedule (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
- 1.2. This Schedule comprises:
  - (a) Part A: Service Levels and Service Credits;
  - (b) Annex 1 to Part A - Service Levels and Service Credits Table;
  - (c) Annex 2 to Part A – Critical Service Level Failure;
  - (d) Part B: Performance Monitoring; and
  - (e) Annex 1 to Part B: Additional Performance Monitoring Requirements.

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## **PART A: SERVICE LEVELS AND SERVICE CREDITS**

### **2. GENERAL PROVISIONS**

- 2.1. The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout, respectively, the Call Off Contract Period and the Framework Period.
- 2.2. The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
- (a) [Supply performance;
  - (b) Quality of [Goods and/or] Services;
  - (c) Customer support;
  - (d) Complaints handling; and
  - (e) Accurate and timely invoices.]
- 2.3. The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Schedule will result in Service Credits being issued to Customers.

### **3. PRINCIPAL POINTS**

- 3.1. The objectives of the Service Levels and Service Credits are to:
- (a) ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
  - (b) provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and
  - (c) incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

### **4. SERVICE LEVELS**

- 4.1. Annex 1 to this Part A of this Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
- 4.2. The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Schedule (the "**Service Level Performance Criteria**") and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

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- 4.3. The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 4.4. If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period:
- (a) is likely to or fails to meet any Service Level Performance Measure or
  - (b) is likely to cause or causes a Critical Service Failure to occur,
  - (c) the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause **Error! Reference source not found.** of this Call Off Contract (Service Levels and Service Credits), may:
    - (i) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
    - (ii) if the action taken under paragraph (i) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
    - (iii) if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Schedule; or
    - (iv) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause **Error! Reference source not found.** of this Call Off Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause **Error! Reference source not found.** of this Call Off Contract in relation to Material Breach).
- 4.5. Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.

## 5. SERVICE CREDITS

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

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

## **6. NATURE OF SERVICE CREDITS**

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

## **7. SERVICE CREDIT cap**

- 7.1.** For the purposes of the Enabling Agreement the **Service Credit Cap** means, for the relevant Month, twenty five percent (25%) of the Booking Fees paid or payable for such Month.

**[Drafting Note: 25% of the Booking Fees will be at risk per month.]**

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

**[Drafting Note: Guidance for Suppliers: 1) Suppliers must provide performance results and evidence monthly, by the 12th of the month following. For example, January performance will be delivered by the 12th February.**

**2) Measures are reported and provided by department, and must include performance against individual targets SLAs.**

**3) Failure to meet any target will require a Corrective Action plan being produced and implemented in month 2.**

**4) If SLA is restored by month 3 then no Service Credit will be claimed. If SLA continues to be missed at month 3, then Service Credit will be claimed and backdated to month 1 charged on a per department level and capped to 0.5% of total gross invoice value.**

**"5) Failure to deliver a specific SLA with a department for 4 consecutive months, 4 months within any 12 month period, or a single SLA in 5 departments in one reporting period will result in :**

**\* 2 x Service Credits being claimed backdated to initial service failure date**

**\* Supplier must schedule a priority meeting with the Contracting Authority to discuss failure and corrective action**

**Furthermore, contract may be terminated".**

**6) If an SLA is missed in 4 or more departments, then supplier must schedule a priority meeting with the Contracting Authority to discuss the failure and corrective action.**

**7) Whilst performance measurement will be available from the implementation point/ go live in each department, Service credits will only commence on the 3rd full month after each department's implementation.**

**8) 1 service credit = £1.]**

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SL A Ref	Spec Ref	Service Level	Detail	Target	Measurement	Contract 1	Contract 2	Contract 3	Contract 4	CCS Contract level
SL 1	3.3.2.1	<b>Online booking system availability</b>	Notwithstanding periods of scheduled non availability (see SL2), online booking system shall be available 98% of available minutes	System shall be available 98% of available minutes  System availability is measured as 1440 minutes per day x number of days in reporting month.	Supplier shall provide a report, broken down by department by the 12th of the month following, for example,	50 credits for each 1% below target	100 credits for each 1% below target	50 credits for each 1% below target	N/A	

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			measure d and reported on a monthly basis		January perform ance will be deliver ed by the 12th Februar y. The Contra cting Authori ty and Contra cting Custom er shall retain the right to audit					
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					and/or conduct spot checks					
SL 2	3.3.2 .2	<b>System Maintenance (including but not limited to online booking system, GDS and rail ticket printers )</b>	System maintenance (including but not limited to online tools, GDS and rail printers) to be communi cated with the Contracti ng	Information on non- availability of the system is to be shared with the Contracting Authority and Contracting Customer at least 2 weeks in advance of the commence	Supplier shall provide a report, broken down by depart ment by the 12th of the month following, for exampl	50 credits for failing to achieve target	100 credits for failing to achieve target	50 credits for failing to achieve target	N/A	

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			Authority and Contracting Customer at least 2 weeks in advance of the commencement of scheduled maintenance. - and can only be conducted outside of core hours	ment of the scheduled maintenance and or system upgrades. The Supplier shall inform the Contracting Authority and Contracting Customer if any action is required to implement the system upgrade and the benefits that any system upgrades	e, January performance will be delivered by the 12th February. The Contracting Authority and Contracting Customer shall retain the right to					
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				shall deliver to the Contracting Body(s) with a minimum of 2 weeks notice.	audit and/or conduct spot checks					
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Crown [Travel Booking  
and Management  
Services] [Venue  
Management Services]  
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			machines or automated attendant models). <b>Non-core hours</b> - All telephone calls shall be answered by a human within 600 seconds / 10 minutes (this does not include	clarity an abandoned call is only considered where it has waited for >60 seconds.	ed by the 12th February. The Contracting Authority and Contracting Customer shall retain the right to audit and/or conduct spot checks					
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			answer machines or automate d attendant models). No call in non core hours shall exceed 10 minutes wait time Note : Contract 1 shall not use answerph ones / voicemail s							
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			<div>2) Abandon ed calls :</div> <div>Abandon ed calls shall not exceed 5% of total presente d</div>							
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SL 4	3.4.10/11	<b>Response times</b>	<b>The supplier shall at a minimum meet the following response times :</b> Emails and fax : within 4 business hours of receipt Return calls/ voicemails within 2 business hours of receipt  <b>Note :</b>	98% within target excluding automated acknowledgment	Supplier shall provide a report, broken down by department by the 12th of the month following, for example, January performance will be delivered	50 credits for each 1% below target	50 credits for each 1% below target	50 credits for each 1% below target	50 credits for each 1% below target	
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			Contract 1 shall not use answerphones / voicemails		ed by the 12th February. The Contracting Authority and Contracting Customer shall retain the right to audit and/or conduct spot checks					
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SL 5		<b>Accurac y of docume ntation</b>	The supplier shall ensure the accuracy of the content of all confirmat ions / tickets / vouchers and invoices (to include that mandator y reference fields are complete	<b>Minimum levels :</b>  * Confirmatio ns / tickets / vouchers - online 100% / offline 98% of all transactions booked  * Invoices 100% of all invoices issued	Supplie r shall provide a report, broken down by depart ment by the 12th of the month followi ng, for exampl e, January perfor mance will be deliver	100 credits for each 1% below target	100 credits for each 1% below target	100 credits for each 1% below target	100 credits for each 1% below target	
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			d as given ).		ed by the 12th Februar y. The Contra cting Authori ty and Contra cting Custom er shall retain the right to audit and/or conduc t spot checks					
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Crown [Travel Booking  
and Management  
Services] [Venue  
Management Services]  
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			issues, queries, and complain ts	3rd party supplier these to be: a) resolved within 7 working days or b) an update provided every 3 working days until a satisfactory conclusion is reached.	ed by the 12th Februar y. The Contra cting Authori ty and Contra cting Custom er shall retain the right to audit and/or conduc t spot checks						
			<b>2) Ratio of complain ts against bookings made</b>								
			Number of upheld complain ts against the TMC /VMC	Number of uphold complaints against TMC /VMC shall not exceed 0.5% of total							

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			performance should not exceed 0.5% of the total bookings made. Note : this should not include complaints against suppliers which we cannot measure the TMC VMC on.	bookings made aggregated across all transaction types						
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SL 7		<b>Management Information shall be complete and delivered on time to each customer</b>	Accurate management information shall be delivered to both the Customer and the Authority in the agreed timescales.	* 99% accuracy/completeness of all data  * 100% availability by 5th working day of the following month (customers), 100% availability of consolidated data to the Authority by the 7th day of the following month	MI available to Contracting Body  Contracting Customer(s) will notify The Authority if Supplier fails to meet the	100 credits for every 1% of inaccurate/incomplete data input below the target  100 credits for every 2 working days of non-availability beyond target date	100 credits for every 1% of inaccurate/incomplete data input below the target  100 credits for every 2 working days of non-availability beyond target date	100 credits for every 1% of inaccurate/incomplete data input below the target  100 credits for every 2 working days of non-availability beyond target date	100 credits for every 1% of inaccurate/incomplete data input below the target  100 credits for every 2 working days of non-availability beyond target date	
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					target date.					
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SL 8		<b>Effective delivery of account management</b>	<b><i>Annual survey with department / Authority contract review to review Programme Management performance in the following areas :</i></b>  1) Degree to which they share best	Each question rates 1 - 5 (1 = highly dissatisfied / 5 = highly satisfied). Target 3.7 or higher when all questions aggregated	Survey completed by each department annually	1000 credits for failing to achieve target	1000 credits for failing to achieve target	1000 credits for failing to achieve target	1000 credits for failing to achieve target	
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			practice across departments 2) Degree to which supplier shares industry best practices and proactively transfers knowledge to our staff 3) Degree to which suppliers recommendations							
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			reflect their understa nding of our business objective s and culture 4) Degree to which they proactivel y follows up on action items from business review meetings 5 Degree to which							
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			they create business plans with each departme nt 6) Degree to which they are flexible in their approach to delivering services to customer s 7) Degree to which the supplier							
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			suggests process improve ments to streamlin e business operation s 8) Degree to which an effective business continuit y and crisis managem ent approach is managed, tested							
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			and results shared with customer s 9) Degree to which informati on of where supplier is involved in fraud allegation s / litigation or pending actions against them is							
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			shared with customer where legally able to do so 10) Degree to which program manager drives cost savings initiatives							
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SL 9		<b>Traveller and/or travel / venue booker survey</b>	Satisfaction survey to measure key service delivery components to both travellers and travel bookers. Audience / distribution, approach and questions to be agreed	Each question rates 1 - 5 (1 = highly dissatisfied / 5 = highly satisfied). Target 3.7 or higher when all questions aggregated	Survey completed by each department annually	200 credits for failing to achieve target	200 credits for failing to achieve target	200 credits for failing to achieve target	200 credits for failing to achieve target	
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			with the Authority							
SL 10		<b>1) Ticket refunds - unused or uncollected tickets</b>  <b>2) Ticket refunds - unprinted tickets</b>	1) Where applicable, refunds for unused rail tickets which have been returned to the Supplier or uncollected rail tickets to be credited	1) 100% credited to traveller's cost centre within 2 months of date of intended travel  2) 100% credited to traveller's cost centre within 2 months of ticket expiry date	Evidence of compliance to be emailed to Contracting Body monthly with a copy to The Authority quarterly. The	10 credits for every 1% below target	10 credits for every 1% below target	10 credits for every 1% below target	N/A	

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			to the traveller's cost centre within 2 months of the date of intended travel.		supplier shall retain the right to audit and customer may choose to perform spot checks					
			2) Where applicable, refunds for unprinted rail tickets to be credited to the traveller's							

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			cost centre within 2 months of the travel expiry date.							
SL 11		<b>Contract Management - management information</b>	All MI returns to be returned to CCS by the 5th working day of each month	99% received by 5th working day of the month	Confir matio n of receipt and time of receipt by the Authori ty (as evidenc ed within the					100 credit s for every 1% below target

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					Authori ty's data wareho use (MISO) system)					
SL 12		<b>Contrac t Manage ment - paymen t of CCS commis sion</b>	All invoices to be paid within 30 calendar days of issue	99% received by 5th working day of the month	Confi rmatio n of receipt and time of receipt by the Authori ty (as evidenc ed within the Authori ty's					100 credit s for every 1% below target

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					CODA system)					
SL 13		<b>Contract Management - Supplier self-audit</b>	1) Supplier self-audit certificate to be issued to the Authority in accordance with the Contract Agreement 2) Actions identified in an Audit Report to be	100% compliance	Confirmation of receipt and time of receipt by the Authority Confirmation by the Authority of completion of the actions by the dates					100 credits for each instance of non compliance - measured monthly

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			delivered by the dates set out in the Audit Report		identified in the Audit Report					
SL 14		<b>Contract Management - Operational Efficiency, Price Savings and demand management</b>	The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Contract Period via continuous	95% of mutually agreed action plans to be delivered and achieved by agreed date	Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier					10 credits for ever 1% of items below target

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			improve ment and innovatio n		r Action Plan					
SL 15		<b>Supplier rates - Demonstrating that best available rates are obtained and offered to travel bookers</b>	The supplier is expected to source the lowest air, rail and hotel rates based on the travel bookers instructions and/or travel policy. When challenge	99.99% adherence to lowest fares in market. Eg no more than 0.01% tolerance for instances of lowest fares not being found (successful challenges)	* Travellers / travel bookers are able to challenge fares / rates offered by submitting screenshots for where	100 credits for each 0.01% below target of 99.99%	100 credits for each 0.01% below target of 99.99%	100 credits for each 0.01% below target of 99.99%	100 credits for each 0.01% below target of 99.99%	
				Performance to be measured monthly by		For each upheld instance of the wrong fare provided, supplier to refund the difference in fare / rate	For each upheld instance of the wrong fare provided, supplier to refund the difference in fare / rate	For each upheld instance of the wrong fare provided, supplier to refund the difference in fare / rate	For each upheld instance of the wrong fare provided, supplier to refund the difference in fare / rate	

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			d about any lower fares / rates, the supplier is to log and investigat e each instance. Where a flight, rail ticket or hotel rate is shown to be cheaper via an alternate source (such as airlines own	department.	they feel the lowest fare has not been supplie d * Supplie r will review to ensure that same travel details and conditi ons have been					
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			website or other online provider), then supplier to investigate mitigating action to ensure future instances are avoided.		used * Supplier will create a log of instances where they have been challenged and note each item on the log including a field to identify					
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					whether the issue was upheld (a valid challenge), along with mitigating action to address (such as consultant training, amendments					
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					to technol ogy or address ing with the supplie r such as the air, hotel or rail provide r).					
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## ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

[In relation to [ ] a Critical Service Level Failure shall include a delay in producing [ ] ordered by the Customer in excess of twenty four (24) hours more than once in any [three (3) Month] period or more than three (3) times in any rolling twelve (12) Month period.]

[In relation to [ ] a Critical Service Level Failure shall include a loss of [ ] during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) to the [ ] for more than twenty four (24) hours accumulated in any [three (3) Month] period, or forty eight (48) hours in any rolling twelve (12) Month period.]

[other ]

[The number of Service Level Performance Criteria for the purpose of Clause **Error! Reference source not found.** shall be [ ]]

## **PART B: PERFORMANCE MONITORING**

### **8. PRINCIPAL POINTS**

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

### **9. REPORTING OF SERVICE FAILURES**

- 9.1. The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 8.2 of Part B of this Schedule above.

### **10. PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 10.1. The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 8.2 of Part B of this Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- (a) for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - (b) a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - (c) any Critical Service Level Failures and details in relation thereto;
  - (d) for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - (e) the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - (f) such other details as the Customer may reasonably require from time to time.

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- 10.2. The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
  - (b) take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
  - (c) be attended by the Supplier's Representative and the Customer's Representative; and
  - (d) be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 10.3. The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 10.4. The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

## 11. SATISFACTION SURVEYS

- 11.1. In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 11.2. The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Call Off Contract.
- 11.3. All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause **Error! Reference source not found.** of this Call Off Contract (Continuous Improvement).

## **SCHEDULE 4 - PRICING & INVOICING**

**[Drafting Note: It is expected that the Booking Fees set out in Annex 1 (Booking Fees) of this Schedule will align with: (i) the Pick List at Annex 2 of the Enabling Agreement; and (ii) the Services set out in Schedule 2 (Services), i.e., the pricing should be transparent against the Services selected / provided. The Booking Fees will be populated in Annex 1 (Booking Fees) of this Schedule based on the information provided by the Supplier in its response to the ITT, including relevant pricing information from its response to the ITT pricing matrix.]**

### **1. GENERAL PROVISIONS**

1.1. This Schedule provides details about:

- (a) the Charges payable by the Enabling Authority;
- (b) the Booking Fees payable by the Enabling Authority for the Services under the Enabling Agreement;
- (c) the payment terms / profile for the Enabling Agreement;
- (d) the invoicing procedure; and
- (e) the procedure applicable to any adjustments of the Booking Fees.

### **2. BOOKING FEES**

2.1. The Booking Fees which are applicable to the Enabling Agreement are set out in Annex 1 of this Schedule.

2.2. The Supplier acknowledges and agrees that:

- (a) the Booking Fees can in no event exceed the corresponding Booking Fees set out in Annex 1 (Booking Fees) of this Schedule; and
- (b) subject to paragraph 7 below, the Booking Fees cannot be increased during the Contract Period.

### **3. COSTS AND EXPENSES**

3.1. The Booking Fees and Commissions include all costs and expenses relating to the provision of the Services and/or the Supplier's performance of its obligations under the Enabling Agreement and, subject to paragraph 3.2 below, no further amounts shall be payable by the Enabling Authority to the Supplier in respect of the Services and/or such performance, including in respect of matters such as:

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- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
  - (b) any amount for any services provided or costs incurred by the Supplier prior to the Commencement Date of the Enabling Agreement.
- 3.2. The Enabling Authority is responsible for payment of the element of the Charges that relates directly to the third party service booked by the Supplier in connection with the Services provided by the Supplier in accordance with Schedule 2 (Services).

#### **4. PAYMENT TERMS / PAYMENT PROFILE**

- 4.1. The Enabling Authority shall pay the Charges to the Supplier in accordance with this Schedule.
- 4.2. Where the Supplier enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, the Supplier shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 4.3. The Supplier shall add VAT to the Charges and/or Booking fees, if applicable, at the prevailing rate as applicable and the Enabling Authority shall pay such VAT to the Supplier following its receipt of a valid VAT invoice.
- 4.4. All monetary figures in Annex 1 (Booking Fees) of this Schedule are exclusive of VAT.
- 4.5. The Supplier shall indemnify the Enabling Authority on a continuing basis against any liability ( including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Enabling 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 the Enabling Agreement. Any amounts due under this paragraph shall be paid by the Supplier to the Enabling Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Enabling Authority.
- 4.6. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Enabling Agreement, subject to the terms of the Enabling Agreement and the Contract that relation to terminations and subject to the Escalation Procedure under the Enabling Agreement and the Contract, for failure to pay undisputed sums of money. If any amount payable under the Enabling Agreement is not paid within sixty (60) days of the due date for payment, interest shall be payable by the Enabling Authority at a rate of five percent (5%) above the base rate of the Bank of England, from the due date to the date of actual payment.



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- 4.7. The currency of the Booking Fees identified in Annex 1 (Booking Fees) of this Schedule is in Pounds Sterling and all invoices provided under this Schedule shall be in Pounds Sterling.
- 4.8. The Parties agree that the Booking Fees shall not be increased to take account of currency fluctuations.
- 4.9. There shall be no indexation linked increases applied to the Booking Fees.

## 5. INVOICING PROCEDURE

- 5.1. The frequency of the invoicing under the Enabling Agreement shall be determined by the Enabling Authority as identified in Annex 2 (Pick List) of the Enabling Agreement.
- 5.2. All invoices issued by the Supplier under this paragraph 5 in respect of the Booking Fees shall be in arrears.
- 5.3. The Enabling Authority shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Enabling Authority in paragraph 5.6 below and in accordance with the provisions of the Enabling Agreement. Any invoices for payment submitted by the Supplier to the Enabling Authority pursuant to this paragraph 5 shall be considered and verified by the Enabling Authority in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed.
- 5.4. The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and is supported by any other documentation reasonably required by the Enabling Authority to substantiate the invoice, including ensuring that each invoice (whether submitted electronically or in a paper form, as the Enabling Authority may specify):
  - (a) contains all appropriate references, as more particularly described in Schedule 2 (Services);
  - (b) shows separately:
    - (i) any Service Credits due to the Enabling Authority; and
    - (ii) the VAT added to the due and payable Booking Fees in accordance with this Schedule, and the tax point date relating to the rate of VAT shown;
  - (c) is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Booking Fees or otherwise recover from the Enabling Authority as a surcharge the Management Charge levied on it by the Client); and
  - (d) it is supported by any other Supporting Documentation reasonably required by the Enabling Authority to substantiate that the invoice is a Valid Invoice.
- 5.5. All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in the Enabling Agreement, in

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cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

- 5.6. The Supplier shall submit invoices directly to the Enabling Authority at the contact details provided in Annex 2 (Pick List) of the Enabling Agreement.

## **6. ADJUSTMENT OF THE BOOKING FEES**

- 6.1. Subject to paragraphs 6.2 below, the Booking Fees will remain fixed for the Contract Period.

- 6.2. Subject to paragraph 6.3 below, the Booking Fees shall only be varied:

- (a) where the result of the Annual Review under the Contract results in a change to the Booking Fees in accordance with the provisions of Clause [xx] (Annual Review) of the Contract.
- (b) due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Booking Fees in accordance with Clause [xx] (Legislative Change) of the Enabling Agreement; or
- (c) where all or part of the Booking Fees are reduced as a result of a review of Booking Fees in accordance with Schedule 10 (Value for Money).

- 6.3. Any change to the Booking Fees shall be made in accordance with Schedule 16 (Variation of Contract Form).

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## **ANNEX 1**

### **BOOKING FEES**

**[Drafting Note: It is expected that the Booking Fees set out in Annex 1 (Booking Fees) of this Schedule will align with: (i) the Pick List at Annex 2 of the Enabling Agreement; and (ii) the Services set out in Schedule 2 (Services), i.e., the pricing should be transparent against the Services selected / provided. The Booking Fees will be populated in Annex 1 (Booking Fees) of this Schedule based on the information provided by the Supplier in its response to the ITT, including relevant pricing information from its response to the ITT pricing matrix.]**

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## SCHEDULE 5 - SECURITY REQUIREMENTS AND PLAN

**[Drafting Note: This Schedule is still a “working draft”. Please note that a separate exercise will need to be carried out after the issue of the ITT but prior to signature of the Contract to ensure that: (1) the content aligns with the new Contract / Enabling model; (2) the content of this Schedule aligns with and uses the definitions in Schedule 1 (Definitions); (3) that the cross-references and numbering are correct; and (4) there are no conflicts between the provisions and processes in this Schedule and those that may be set out elsewhere in the Contract, other Schedules and/or the Enabling Agreement.]**

### 1. DEFINITIONS

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

<b>"Breach of Security"</b>	means the occurrence of: <ul style="list-style-type: none"><li>(a) any unauthorised access to or use of the Services, the Sites and/or any Information and Communication Technology (“ICT”), information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or</li><li>(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract,</li></ul> in either case as more particularly set out in the security requirements in the Security Policy;
<b>"ISMS"</b>	the information security management system and process developed by the Supplier in accordance with paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule 8; and
<b>"Security Tests"</b>	tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

### 2. INTRODUCTION

2.1. The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Call Off Contract will be met.

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- 2.2.** The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:
- (a) [insert security representative of the Customer]
- (b) [insert security representative of the Supplier]
- 2.3.** If the persons named in paragraphs (a) and (b) are included as Key Personnel, Clause **Error! Reference source not found.** (Key Personnel) shall apply in relation to such persons.
- 2.4.** The Customer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.5.** Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.6.** The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Customer Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Customer Data remains under the effective control of the Supplier at all times.
- 2.7.** The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Customer.
- 2.8.** The Customer and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Customer's security provisions represents an unacceptable risk to the Customer requiring immediate communication and co-operation between the Parties.

### 3. ISMS

- 3.1.** The Supplier shall develop and submit to the Customer for the Customer's Approval, within twenty (20) working days after the Call Off Commencement Date or such other date as agreed between the Parties, an information security management system for the purposes of this Call Off Contract, which shall comply with the requirements of paragraphs 3.3 to 3.5 of this Schedule 8 (Security).
- 3.2.** The Supplier acknowledges that the Customer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.
- 3.3.** The ISMS shall:
- (a) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Customer Premises, the Sites, any ICT,

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information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;

- (b) meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph 7;and
- (c) at all times provide a level of security which:
  - (i) is in accordance with the Law and this Call Off Contract;
  - (ii) as a minimum demonstrates Good Industry Practice;
  - (iii) complies with the Security Policy;
  - (iv) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/255910/HMG\\_Security\\_Policy\\_Framework\\_V11.0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf) ;
  - (v) takes account of guidance issued by the Centre for Protection of National Infrastructure on Risk Management [http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk\\_management.pdf](http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk_management.pdf)
  - (vi) complies with HMG Information Assurance Maturity Model and Assurance Framework <http://www.cesg.gov.uk/publications/Documents/iamm-assessment-framework.pdf>
  - (vii) meets any specific security threats of immediate relevance to the Services and/or Customer Data; and
  - (viii) complies with the Customer's ICT policies:
- (d) document the security incident management processes and incident response plans;
- (e) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware; and
- (f) be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Customer in advance of issue of the relevant Security Management Plan).

**3.4.** Subject to Clause **Error! Reference source not found.** of this Call Off Contract (Security and Protection of Information) the references to Standards, guidance and policies contained or set out in paragraph 3.3 of this Schedule shall be deemed to be

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references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

- 3.5.** In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Schedule, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.6.** If the ISMS submitted to the Customer pursuant to paragraph 3.1 of this Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 3 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 of this Schedule shall be deemed to be reasonable.
- 3.7.** Approval by the Customer of the ISMS pursuant to paragraph 3.6 of this Schedule or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

#### **4. SECURITY MANAGEMENT PLAN**

- 4.1.** Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 4 of this Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Schedule.
- 4.2.** The Security Management Plan shall:
- (a) be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
  - (b) comply with the Security Policy;
  - (c) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
  - (d) detail the process for managing any security risks from Sub-contractors and third parties authorised by the Customer with access to the Services,

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processes associated with the delivery of the Services, the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;

- (e) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (f) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule 8 (including the requirements set out in paragraph 3.3 of this Schedule);
- (g) set out the plans for transitioning all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties .
- (h) be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- (i) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule .

**4.3.** If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 of this Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it



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does not comply with the requirements set out in paragraph 4.2 of this Schedule shall be deemed to be reasonable.

- 4.4.** Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3 of this Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

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

- 5.1.** The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to Services and/or associated processes;
- (c) any changes to the Security Policy;
- (d) any new perceived or changed security threats; and
- (e) any reasonable change in requirement requested by the Customer.

- 5.2.** The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:

- (a) suggested improvements to the effectiveness of the ISMS;
- (b) updates to the risk assessments;
- (c) proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
- (d) suggested improvements in measuring the effectiveness of controls.

- 5.3.** Subject to paragraph 5.4 of this Schedule, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Schedule, a Customer request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

- 5.4.** The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

## **6. SECURITY TESTING**

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- 6.1.** The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2.** The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 6.3.** Without prejudice to any other right of audit or access granted to the Customer pursuant to this Call Off Contract, the Customer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test. If any such Customer's test adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Customer's test.
- 6.4.** Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Schedule reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 6.5.** If any repeat Security Test carried out pursuant to paragraph 6.4 of this Schedule reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Call Off Contract.

## **7. ISMS COMPLIANCE**

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

## **8. BREACH OF SECURITY**

- 8.1.** Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.
- 8.2.** Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Schedule, the Supplier shall:
- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:
    - (i) minimise the extent of actual or potential harm caused by any Breach of Security;
    - (ii) remedy such Breach of Security to the extent necessary protect the integrity of the Customer Property and/or Customer Assets to the extent within its control against any such Breach of Security or any potential or attempted Breach of Security;
    - (iii) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Services so as to meet the relevant Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for such period as the Customer, acting reasonably, may specify by written notice to the Supplier;

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- (iv) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- (v) supply any requested data to the Customer (or the Computer Emergency Response Team for UK Government (“GovCertUK”)) on the Customer’s request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (vi) as soon as reasonably practicable provide to the Customer full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.

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

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## **ANNEX 1: SECURITY POLICY**

[ ]

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## **ANNEX 2: SECURITY MANAGEMENT PLAN**

[ ]

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## **ANNEX 3: CROWN TRAVEL AND VENUE SERVICE (CTVS) DATA SECURITY SCHEDULE**

**[Drafting Note: The Client has added a new Annex 3 to this Schedule which contains “Crown Travel and Venue Service (CTVS) Data Security Schedule”.]**

### **Crown Travel and Venue Service (CTVS) Data Security Schedule**

#### **1. Section 1 : Data Security Solution Requirements**

##### **1.1. Crown Travel and Venue Service (CTVS) Security Principles**

The Security Principle Control Matrix (Appendix A to this Annex 3), defines the security characteristics of the Service supplied under the CTVS contract. The Supplier shall assert, and evidence compliance, of the Service Supplied under the CTVS contract against the Security Principles. The Security Principle Control Matrix describes the required security outcomes which the service will need to achieve, in order to provide the Contracting Authority with the assurance and confidence that the Security Risk is being appropriately managed.

##### **1.2. Handling, Processing and Storage of OFFICAL-SENSITIVE information**

Where the Service is going to handle, process and store OFFICIAL- SENSITIVE information, the Contracting Authority requires additional measures to be implemented to secure data of this type throughout the Service Delivery lifecycle. The measures defined herein are in addition to the Supplier delivering a Service where the residual risk associated with the Service Supplied under the CTVS contract is acceptable to the Contracting Authority. For a Supplier service to handle OFFICIAL-SENSITIVE data the residual risk associated with the additional measures defined below shall be considered acceptable to the Contracting Authority. The additional measures have been cross referenced to the relevant Security Principle headline defined within Appendix A Security Principle Matrix.

Serial	Security Principle Headline	Additional Measures
1.	2. Asset Protection and Resilience	The Supplier shall provide evidence that the infrastructure devices storing any bulk customer data shall not be directly accessible from a device hosted on the internet. In addition, the devices storing bulk data shall be located in the UK. Management and support functions may be off-shored as long as independently assured evidence can be provided that no access to user/consumer information can be obtained from off-shore locations.
2.	4. Governance	The Supplier shall provide evidence of robust handling processes throughout the lifecycle of all information held on the system which conforms to the definition of personal data defined within the Data Protection Act 1998. The robust handling procedures will need to specify the procedural measures implemented to ensure:

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		<ul style="list-style-type: none"> <li>• There are clearly defined roles associated with any access to bulk customer data.</li> <li>• Where a role is identified as having access to bulk customer data there shall be defined responsibilities which detail any actions which can be performed in support of maintaining Service availability.</li> <li>• There shall be a process defined which authorises Supplier staff to be able access to bulk customer data for purposes of delivering and maintaining the Service availability.</li> <li>• Any individual being given access to bulk customer data is aware of the HMG requirements for data protection.</li> <li>• The Supplier nominates an individual within its organisation who is independent from the programme delivery team and is responsible for ensuring the enforcement of the measures defined above.</li> </ul>
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## **2. Section 2: Data Security Delivery Requirements**

### **2.1. Data Security Management Support Activities**

The Supplier shall also undertake the following activities to support the delivery a secure CTVS Service:

- Secretariat support and hosting of the CSWG. This shall include:
  - Providing facilities to host the meeting
  - Issue agenda and any background papers prior to meeting
  - Issue minutes of meeting
- Presentation of IA risks to the CTVS Programme Board.
- Security support to the Service consumers during take on and Service Delivery. This shall include providing both technical and managerial support to Departmental Service consumers as directed by the Contracting Authority.
- Technical Support to Contracting Authority led Security design reviews, as required. This shall include the production and agreement, with the Contracting Authority's Security Assurance lead stakeholder, of minutes/actions arising.
- Support to risk escalation, as required, in service consuming Departments. This shall include the production and agreement, with the Contracting Authority's Security Assurance lead stakeholder, of a security case.
- Support to Contracting Authority's security risks management actions, this may including (but not limited to):
  - changes to the service implementation,



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- audits of service deliver,
- changes to the data security documentation

## **2.2. Security Audit**

The Contracting Authority shall have the right to audit any evidence produced in support of claimed compliance with any Security Principle.

## **2.3. Security Documentation**

The Crown Travel and Venue Service (CTVS) shall produce and maintain the following Data Security documentation in support of the contracting authority's security risk management decision to consume the services:

- Data Security Context - The purpose of this document is to enable the Supplier to complete and maintain a record throughout the lifetime of the Crown Travel & Venue Services Contract, to document the technical implementation context against which the Supplier shall state compliance with the Contracting Authority's Data Security principles. The document shall provide a breakdown of the Service Implementation which includes:
  - Description of each different type of User
  - Description of the Information Exchange with each external entity from both a service implementation and management perspective
  - Provide a breakdown of the key technical aspects of the Service implementation to a level that shall enable the authority to assure comprehensive and consistent application coverage of the principles across the solution.
- Data Security Compliance Statement – The purpose of this document is to enable the Supplier to complete and maintain a record throughout the lifetime of the Crown Travel & Venue Services Contract, to describe the security aspects of their service offering and to provide evidence in support of assurance of their security controls.
- Data Security Risk Register – The purpose of this document is enable the Supplier to complete and maintain a record throughout the lifetime of the Crown Travel & Venue Services Contract, the security risks associated with the solution. For each risk the supplier shall provide the following information
  - an assessment of the severity of the risk
  - description of the remediation action
  - target date for remediation
- Data Security Residual Risk Statement – The purpose of this document is to enable the Supplier to complete and maintain a record throughout the lifetime of the Crown Travel & Venue Services Contract to describe the Residual Security Risks associated with Service Implementation.

## **2.4. HMG Security Risk Acceptance Decision**

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The Supplier shall have obtained the agreement of the Contracting Authority to accept the residual security risk associated with the Crown Travel and Venue Services (CTVS) service within 12 months from contract commencement date. In support of the risk management decision the Supplier shall provide the Contracting Authority with a Data Security Residual Risk Statement.

If the Crown Travel and Venue Services (CTVS) **supplier** fails to mitigate the risk to a level that is acceptable to the Contracting Authority, within the first 12 months from contract commencement date, then **the Supplier shall make a compensation payment of £10,000 to the Contracting Authority** in recognition of the transfer of risk **to the Contracting Authority**.

If the Contracting Authority is willing to **accept** the residual data security risks then it shall issue a Residual Risk Acceptance Certificate which shall describe the conditions under which the Service can be delivered to HMG consumers. The certificate shall also define the conditions against which the Contracting Authority reserves the right to reassess the decision to manage the residual security risks. If the Contracting Authority wishes to reassess the risk management decision the Supplier shall re-issue the Security Residual Risk Statement.

## 2.5. Data Security Offshoring Approval

Where part or all of the Crown Travel and Venue Services (CTVS) are not delivered from;

- country within the EEA,
- country where the European Commission has made a positive findings of adequacy or
- supplier who has Safe Harbour approval

The Crown Travel and Venue Services (CTVS) Providers shall obtain approval from GSIRO through the Contracting Authority for the off-shored elements. However, if the Crown Travel and Venue Services (CTVS) Provider needs to exchange the Contracting Authorities information with an off shored third party service provider on an individual travel transactional basis (i.e. with a Hotel) then there is NO requirement to obtain GSIRO approval for this aspect of the service.

The Supplier shall be cognisant of supporting HMG compliance with EU data protection legislation throughout the life of the Crown Travel and Venue Services (CTVS) Contract.

## 3. Section 3: Management of Crown Travel and Venue Services (CTVS) Data Security

### 3.1. Crown Travel and Venue Services (CTVS) Security Risk Management Roles

The following are the key Data Security Roles involved in the management of the Information Risk associated with the CTVS Service:

- Supplier IA Auditor - Define minimum competence of person a Supplier can use to assure the security aspects of the Service Delivery should as a minimum be certified as an IA Auditor at Senior Level. The individual shall be responsible for ensuring the security documentation is an accurate reflection of the Supplier's Service Supplied under the CTVS contract.

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- Contracting Authority's Security Assurance Lead – The Contracting Authority's nominated Security Assurance Lead shall be provided from the CESG Pan-government Accreditation Team.
- Authority's Accreditation Lead -The Authority's nominated Accreditation Lead shall have delegated authority for accepting a level of Security Risk associated with the solution. The Contracting Authority Accreditation resource shall be provided from the CESG Pan –government Accreditation Team.
- Senior Information Risk Owner – The HMG lead for information risk within HMG. The GSIRO is the HMG focus for the management of information risks at Pan Governmental Level.

### 3.2. Crown Travel and Venue Services (CTVS) Security Working Group

The management group responsible for obtaining the information responsible owners agreement to manage the security risk associated with the Crown Travel and Venue Services (CTVS) is the CTVS Security Working Group (CSWG).

The CSWG is a working group **who** manages the delivery of the IA aspect of the solution. The group meets at least twice a year during the Beta Phase and at least **once** annually during the Live Phase.

The CSWG is chaired by the Contracting Authority's Programme Delivery Manager or a nominated representative and **comprises** the following core members:

- Authority's nominated Security Assurance Lead
- Supplier's IA Auditor
- Supplier's Programme representative.

The group is responsible for the following:

- Monitoring the delivery of the evidence in support of claimed Security Principle compliance.
- Managing and maintain the accuracy of the Data Security Risk Register.
- Agreeing Security Test Requirements as being appropriate to assure principle compliance
- Agreeing a Security Case associated with CTVS delivery to enable presentation to the Authority's Accreditation lead for approval.
- Monitoring Security risk impacting upon the operation of the Crown Travel and Venue Services (CTVS) and
- The requirement for identifying, presenting and escalating data security risks which are outside of the Accreditor's delegated Risk Management Authority.

### 3.3. HMG Data Security Principles Compliance Definition

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The supplier shall provide a compliance statement for each Security Principle using one of the following types:

Serial	Principle Compliance	PC Level	Description
1.	Solution Compliant with Principle (SCP)	PC1	The Supplier asserts there is no residual security risk associated with compliance with a Security Principle.
2.	Supplier Managed (SM)	PC2	The Supplier asserts the security risk associated with compliance with a Security Principle which is within the Supplier's Risk Management Authority.
3.	Authority's Security Assurance Managed (ASA)	PC3	The Compliance Statement presented to the Authority is assessed as resulting in a security risk that can be managed by the Security Assurance Lead.
4.	HMG SIRO Managed (HS)	PC4	The Compliance Statement presented to the Authority is assessed as resulting in a security risk that can be managed by the G-SIRO <DN reference>.
5.	Residual Risk is Not Manageable (RRNM)	PC5	The Compliance Statement presented by the Supplier is validated by the Contracting Authority Security Representative as resulting in a security risk which cannot be managed by the HMG SIROs

### 3.4. Security Risk Escalation Requirements

The Supplier shall support the process for escalation and management of risk which is outside of the delegated authority of the Authority's Accreditation authority to accept it. In support of this responsibility the Supplier shall, as directed by the CSWG, present any IA risks to the CTVS Programme Board.

If the CSWG recommends approval of the CTS Residual Risk Statement which is rejected by the Authority's Accreditation, the matter can be escalated to the Head of OG-SIRO via the PSN Connectivity Accreditation Panel (PCAP). Any such escalation shall be presented by the CTVS Security Assurance Lead to the Head of OGSIRO with support from both the Supplier and Accreditor.

CCS – Contract for the provision of [Crown Travel and Management Services] [Crown Venue Management Services]

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**Appendix A Crown Travel and Venue Service (CTVS) Security Principles Matrix**

	Headline	Principle	Sub-points	Implementation Objectives
1	<b>Data in transit protection</b>	OFFICIAL data transiting from a Contracting Body service consumer across untrusted networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality).		Data in transit is protected between the Contracting Body's end user devices and the service.
		OFFICIAL data transiting the Supplier's internal networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality).		Data in transit is protected internally within the service.
		OFFICIAL data transiting untrusted networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality).		Data in transit is protected between the service and other services (e.g. where APIs are exposed).

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2	<b>Asset protection and resilience</b>	Contracting Body data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure.  OFFICIAL data shall be protected to a level which is comparable with that required under UK legislation	Physical location and legal jurisdiction	Service Providers shall ensure that the following information is made available to Contracting Body(s):  The geographic locations where Contracting Body data is stored, processed or managed from.  The applicable legal jurisdictions that the Service Provider operates within and how it provides comparable controls to those required under UK legislation.  Contracting Body(s) shall be informed of any changes to the above.
		OFFICIAL data shall physical protection against unauthorised access, tampering, theft and /or reconfiguration of data processing services.	Datacentre security	Data processing locations used to deliver the service are adequately protected.
		OFFICIAL data when stored on any type of removable media or storage within a service shall not be accessible by local unauthorised parties.	Data at rest protection	The Contracting Body has confidence that removable storage media containing their data is adequately protected from unauthorised access.

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		The process of provisioning, migrating and de-provisioning resources shall not result in unauthorised access to the Contracting Body's data.	Data sanitisation - retention period	The Service Provider shall inform Contracting Body(s) how long it will take to securely erase Contracting Body data (including from any back ups) from the Service Offering.
			Data sanitisation - Contracting Body on-boarding and off-boarding	The Service Provider shall securely erase Contracting Body data when components are moved or re-provisioned, upon request by the Contracting Body or when the Contracting Body leaves the service.
		Once equipment used to deliver the service reaches the end of its useful life it should be disposed of in a way that does not compromise the security of the service or Contracting Body's data	Equipment Disposal	All equipment potentially holding Contracting Body data , credentials, or configuration information for the service shall be identified.Storage media which has held Contracting Body data shall be appropriately sanitised or securely destroyed at the end of its lifecycle.Accounts or credentials specific to the redundant equipment are revoked.
		The service shall have the ability to operate normally in the event of failures, incidents or attacks	Physical resilience and availability	The Service Provider shall clearly articulate the availability capabilities and commitments of the service.  The service has adequate resiliency measures in place.



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3	<b>Separation between tenants</b>	Separation should exist between different Contracting Body(s) of a service to prevent a malicious or compromised Contracting Body from affecting the confidentiality, integrity or availability of another Contracting Body of the service.	The Contracting Body should be informed of any other Contracting Body they share the platform or service with  Separation between Contracting Body(s) shall be enforced at all points within the service where the service is exposed to Contracting Body(s). One Contracting Body shall not be able to affect the confidentiality, integrity or availability of another Contracting Body.
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4	<b>Governance</b>	The Service Provider has a security governance framework that co-ordinates and directs the provider's overall approach to the management of ICT systems, services and information.	IA Risk Management Processes	<p>A clearly identified, and named, board representative (or a person with the direct delegated authority of) shall be responsible for the security of the cloud service. This is typically someone with the title Chief Security Officer, Chief Information Officer or Chief Technical Officer.</p> <p>The Service Provider's security governance framework is formally documented, as are policies governing key aspects of information security relating to the service.</p> <p>Information security is incorporated into the Service Provider's financial and operational risk reporting mechanisms for the service.</p> <p>The Service Provider has defined roles and responsibilities for information security within the service and allocated them to named individuals. This includes a named individual with responsibility for managing the security aspects of the service.</p> <p>The Service Provider has processes in place to identify and ensure compliance with applicable legal and regulatory requirements relating to the service.</p>
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		.	IA Organisational Maturity	The Service Provider can demonstrate a sufficient degree of IA Maturity.
5	<b>Operational security</b>	The Service Provider has processes and procedures in place to ensure the operational security of the service.	Configuration and change management	The status, location and configuration of service components (including hardware and software components) shall be tracked to ensure they can be effectively managed and remain securely configured. Changes to the service shall be assessed for potential security impact. They shall be managed and tracked through to completion.
			Vulnerability management	Potential new threats, vulnerabilities or exploitation techniques which could affect the service are assessed and corrective action is taken.  Relevant sources of information relating to threat, vulnerability and exploitation technique information relevant to the service are monitored by the Service Provider.  The severity of threats and vulnerabilities relevant to the service are considered within the context of the service and this information is used to prioritise implementation of mitigations.  Known vulnerabilities within the service are tracked until suitable mitigations have been deployed through a suitable change management process.

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					<p>Service Provider timescales for implementing mitigations to vulnerabilities found to be present within the service shall be made available to Contracting Body(s).</p> <p>The following timescales are applied as a minimum:</p> <p>‘Critical’ vulnerability mitigations deployed within 14 calendar days of a patch becoming available.</p> <p>‘Important’ vulnerability mitigations deployed within 30 calendar days of a patch becoming available.</p> <p>‘Other’ vulnerability mitigations deployed within 90 calendar days of a patch becoming available.</p> <p>‘Critical’, ‘Important’ and ‘Other’ are aligned to the following common vulnerability scoring systems: National Vulnerability Database Vulnerability Severity Ratings, ‘High’, ‘Medium’ and ‘Low’ respectively (these in turn are aligned to CVSS scores as set out by NIST)</p> <p>Microsoft’s Security Bulletin Severity Rating System ratings ‘Critical’, ‘Important’ and the two remaining levels (‘Moderate’ and ‘Low’) respectively.</p>
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				Protective monitoring	The service shall collect data events from all relevant Potential Provider devices to support effective identification that all implementation objectives are operating effectively. There shall be effective automated analysis systems in place, supported by adequately trained staff, which identify and prioritise indications in the data that may be related to malicious activities. The Service Provider shall provide Contracting Body(s) with alerts resulting from protective monitoring which impact the implementation objectives within 24 hours.
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-	-		Incident management	<p>A defined process and contact route shall exist for reporting of security incidents by Contracting Body(s) and external entities.</p> <p>A definition of a security incident shall be published for the service and the triggers and timescales for sharing such incidents with service Contracting Body(s).</p> <p>The content and format of security incident notifications for sharing information with Contracting Body(s) shall be published.</p> <p>The Service Provider shall initiate investigations into incidents within five hours.</p>
6	<b>Personnel security</b>	Service Provider staff should be subjected to adequate personnel security screening and security education for their role.	Service Contracting Body	Service Provider staff that have logical or physical access to the service shall be subjected to adequate personnel security screening for their role. At a minimum these checks shall include identity, unspent criminal convictions, and right to work checks.

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7	<b>Secure development</b>	Services should be designed and developed to identify and mitigate threats to their security.		<p>The Service Provider shall have a process in place to review new and evolving threats regularly and have development plans in place to progressively improve and reinforce the security of their service against these threats.</p> <p>Software development is carried out in line with industry good practice.</p> <p>Configuration management processes are in place to ensure the integrity of the components of any software.</p>
8	<b>Supply chain security</b>	The Service Provider should ensure that its supply chain satisfactorily supports all of the security principles that the service claims to deliver.		<p>The Service Provider shall clearly define information is shared with or accessible by its third party Potential Providers (and their supply chains).</p> <p>The Service Provider's procurement processes shall ensure that the minimum relevant security requirements for all third party Potential Providers and delivery partners are explicitly documented.</p> <p>The risks to the Service Provider from Supply Chain Potential Providers and delivery partners</p>

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				<p>shall be regularly assessed and appropriate security controls implemented.</p> <p>The Service Provider shall monitor its Supply Chain Potential Provider's compliance with security requirements and initiate remedial action where necessary.</p> <p>The Service Provider's procurement process shall ensure that following contract termination all assets are returned, removed (or appropriately destroyed) and any Supply Chain Providers access rights to the Service Provider's internal systems or information are removed.</p> <p>The Service Provider shall categorise each Supply Chain Provider as one of the following:</p> <p>Type 1 - access to aggregated Contracting Body Consumer data  Type 2 – access to limited number (less than 10) individual Contracting Body Consumer records  Type 3 – access to only part of an I individual Contracting Body Consumer records  Type 4 – no access to Contracting Body Consumer records</p>
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9	<b>Secure Contracting Body management</b>	The Contracting Body should be provided with tools to enable them to securely manage their service.	Authentication of Contracting Body to management interfaces	<p>Only properly authorised individuals from the Contracting Body organisation can authenticate to, and access management tools for the service.</p> <p>Only authorised individuals from the Contracting Body are able to perform actions affecting the service through support channels</p>
			Separation of Contracting Body within management interfaces	<p>No other Contracting Body Service consumer can access management tools for the service.</p> <p>The contracting shall be able to constrain permissions granted to authorised individuals from the Contracting Body to perform actions affecting the service.</p>
			Secure Contracting Body Service Change Authorisation	A Service Provider support procedures shall identify when a support action is security related (such as altering a user's access permissions, or changing user credentials) and ensure appropriate authorisation is in place for this change.
10	<b>Identity and Authentication</b>	Contracting Body User and Service Provider access to all service interfaces should be constrained to authenticated and authorised individuals.		The Service Provider shall implement controls which provide confidence that a user has authorisation to access a specific interface.

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11	<b>External interface protection</b>	All external interfaces of the service should be identified and have appropriate protections to defend against attacks through them.		The service controls and protects access to elements of the service by Contracting Body(s) and outsiders.
12	<b>Secure service administration</b>	The methods used by the Service Provider's administrators to manage the operational service (monitor system health, apply patches, update configuration etc.) should be designed to mitigate any risk of exploitation which could undermine the security of the service.		<p>The networks and devices used to perform administration /management of the service shall be appropriate to protect the Contracting Body's data</p> <p>End user devices used for administration shall be enterprise managed assets and shall be securely configured. CESG's EUD Security Guidance provides recommended good practice for configuration of a range of different end user device platforms which can be used to inform the configuration of these devices.</p>

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13	<b>Audit information for tenants</b>	Contracting Body(s) should be provided with the audit records they need in order to monitor access to their service and the data held within it.		<p>Audit information shall be retained for a minimum of two years or until the Contracting Body leaves the service. The audit information shall be accessible online for a minimum of six months from the point of event collection.</p> <p>The Service Provider shall make tenants aware of:</p> <p>The audit information that will be provided.</p> <p>The format of the data and the schedule by which it will be provisioned (e.g. on demand, daily etc).</p>
14	<b>Security use of the Service by the consumer</b>	Service consumers are clear on their responsibilities when accessing the service.		<p>The Service Consumer understands any service configuration options available to them and the security implications</p> <p>The Service consumer understands the security requirements on their processes, uses and infrastructure related to use of the service.</p> <p>The Contract Body is able to educate its privileged users in how to use it safely and securely.</p>

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## **SCHEDULE 6 -STAFF TRANSFER & PENSIONS**

**[Drafting Note: Schedule 6 is set out as a separate document within the ITT.]**

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## SCHEDULE 7 – IMPLEMENTATION SCHEDULE

**[Drafting Note: The content for Implementation set out in this Schedule is still under a working draft and may be developed further if needed prior to signature of the Contract.]**

**[Drafting Note: The dates referenced in paragraph 2.1 below shall be provided to the Suppliers by the Client during the tender process.]**

### 1. Introduction

- 1.1. The Supplier shall provide the implementation services set out in this Schedule 7 and in the Implementation Plan (“**Implementation Services**”). Such Implementation Services shall be delivered by the Supplier by the applicable dates identified in the Implementation Plan and shall include:
  - 1.1(1) delivery by the Supplier of each of the Deliverables and Milestones in accordance with the applicable Milestone Date in the Implementation Plan; and
  - 1.1(2) any other steps and performance of any other services that are necessary in order for the Supplier to be ready to commence performing the relevant Services in accordance with each of the relevant Enabling Agreements, including in accordance with the Service Levels set out in Schedule 3 (Service Levels and Service Credits) from the relevant Commencement Date of the relevant Enabling Agreement.
- 1.2. The Supplier shall perform the Implementation Services in such a manner that performance of the commencement of the Services by the Supplier takes place in a smooth and orderly manner without disruption or deterioration and so that the Services continue to meet the Enabling Authorities’ business requirements.
- 1.3. The Supplier shall be responsible for the provision of the Implementation Services in order to enable the successful implementation of the Services under each of the Enabling Agreements.

### 2. Implementation Plan

- 2.1. Using the (i) target commencement dates for commencement of the Implementation Services for each Enabling Agreement; and (ii) dates by which the Implementation Services must be completed (“**Implementation Hard Stop Dates**”), as such dates under paragraph (i) and (ii) are provided by the Client at or before the Commencement Date of the Contract or, in respect of new Enabling Agreements to be entered into during the Contract Period, the Supplier shall populate the Outline Implementation Plan set out in Annex 3 of each Enabling Agreement by the Commencement Date for each of such Enabling Agreements with the outline of the Implementation Services to be provided under such Outline Implementation Plan and by the dates identified under paragraph 2.1 above.
- 2.2. Within seven (7) Working Days of such Commencement Date, the Supplier shall provide a detailed Implementation Plan for approval to the Enabling

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Authority, such plan shall contain the detailed Implementation Services that the Supplier shall provide in accordance with the dates identified under paragraph 2.1 above. The Supplier shall take into account any comments or changes requested by the Enabling Authorities prior to finalising the detailed Implementation Plan.

- 2.3. In populating the Outline Implementation Plan or the detailed Implementation Plan, the Supplier shall not change the date of an Implementation Hard Stop Date beyond the dates provided by the Client under paragraph 2.1(ii) above.
- 2.4. In developing the detailed Implementation Plan, the Supplier shall not impose any additional obligations on the Enabling Authorities to those set out in the Outline Implementation Plan without the Client's prior written approval.

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## **SCHEDULE 8 - GUARANTEE**

**[Drafting Note: This Schedule is still a “working draft”. Please note that a separate exercise will need to be carried out after the issue of the ITT but prior to signature of the Contract to ensure that: (1) the content aligns with the new Contract / Enabling model; (2) the content of this Schedule aligns with and uses the definitions in Schedule 1 (Definitions); (3) that the cross-references and numbering are correct; and (4) there are no conflicts between the provisions and processes in this Schedule and those that may be set out elsewhere in the Contract, other Schedules and/or the Enabling Agreement.]**

**[INSERT THE NAME OF THE GUARANTOR]**

**- AND -**

**[INSERT THE NAME OF THE BENEFICIARY]**

## **DEED OF GUARANTEE**

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## DEED OF GUARANTEE

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

### BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**") in favour of
- (2) [The Authority] [Insert name of Contracting Body who is Party to the Guaranteed Agreement] whose principal office is at [                      ] ("**Beneficiary**")

### WHEREAS:

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

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

## 3. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

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

<b>["Authority"]</b>	has the meaning given to it in the Framework Agreement;]
<b>["Beneficiary"]</b>	means [the Authority] [insert name of the Contracting Body with whom the Supplier enters into a Call Off Agreement] and "Beneficiaries" shall be construed accordingly;]
<b>["Call Off Agreement"]</b>	has the meaning given to it in the Framework Agreement;]
<b>["Framework Agreement"]</b>	means the Framework Agreement for the Services dated on or about the date hereof made between the Authority and the Supplier;]



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<b>["Goods"</b>	has the meaning given to it in the Framework Agreement;]
<b>["Guaranteed Agreement"</b>	means [the Framework Agreement] [the Call Off Agreement] made between the Beneficiary and the Supplier on [insert date];]
<b>"Guaranteed Obligations"</b>	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
<b>["Services"</b>	has the meaning given to it in the Framework Agreement;]

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

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#### **4. GUARANTEE AND INDEMNITY**

- 4.1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 4.2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 4.3. If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
  - (a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
  - (b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 4.4. As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

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## **5. OBLIGATION TO ENTER INTO A NEW CONTRACT**

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

## **6. DEMANDS AND NOTICES**

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

- (a) [Address of the Guarantor in England and Wales]
- (b) [Facsimile Number]
- (c) For the Attention of [insert details]

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

- 6.2. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- (c) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

- 6.3. In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

- 6.4. Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

## **7. BENEFICIARY'S PROTECTIONS**

Crown [Travel Booking  
and Management  
Services] [Venue  
Management Services]  
Final ITT Version

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- 7.1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 7.2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
  - (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
  - (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 7.3. The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 7.4. The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in

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a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

- 7.5. The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 7.6. Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 7.7. Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **8. GUARANTOR INTENT**

- 8.1. Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

## **9. RIGHTS OF SUBROGATION**

- 9.1. The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- (a) of subrogation and indemnity;
  - (b) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
  - (c) to prove in the liquidation or insolvency of the Supplier,

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

## 10. DEFERRAL OF RIGHTS

10.1. Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- (a) exercise any rights it may have to be indemnified by the Supplier;
- (b) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
- (c) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
- (d) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
- (e) claim any set-off or counterclaim against the Supplier;

10.2. If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## 11. REPRESENTATIONS AND WARRANTIES

11.1. The Guarantor hereby represents and warrants to the Beneficiary that:

- (a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

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- (c) the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - (iii) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- (d) all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- (e) this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## 12. PAYMENTS AND SET-OFF

- 12.1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 12.2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee 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.
- 12.3. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## 13. GUARANTOR'S ACKNOWLEDGEMENT

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

#### **14. ASSIGNMENT**

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

#### **15. SEVERANCE**

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

#### **16. THIRD PARTY RIGHTS**

- 16.1. A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### **17. GOVERNING LAW**

- 17.1. This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 17.2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 17.3. Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).



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- 17.4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 17.5. The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

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

EXECUTED as a DEED by

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

Director

Director/Secretary

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## SCHEDULE 9 – KEY PERFORMANCE INDICATORS

### 1. GENERAL

- 1.1. The purpose of this Schedule 9 is to set out the KPIs by which the Supplier's overall performance under the Contract shall be monitored and managed. The Client reserves the right to adjust, introduce new, or remove KPIs throughout the Contract Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Schedule 16 (Variation of Contract Form).
- 1.2. The Supplier shall comply with all its obligations related to KPIs set out in the Contract, including Schedule 13 (Management Information) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.
- 1.3. The KPIs from which performance by the Supplier of the Contract will be reported against are set out below:

Key Performance Indicator (KPI)	KPI Target	Measured by
<b>1.Contract Management</b>		
1.1 MI returns: All MI returns to be returned to CCS by the 5 <sup>th</sup> working day of each month	100% if submitted by the 5 <sup>th</sup> 60% if submitted up to 3 days late 0% if submitted over 3 days late	Confirmation of receipt and time of receipt by the Client (as evidenced within the Client's data warehouse (MISO) system)
1.2 All invoices to be paid within 30 calendar days of issue	100% if paid within 30 calendar days of issue 0% if paid over 30 calendar days of issue	Confirmation of receipt and time of receipt by the Client (as evidenced within the Client's CODA system)
1.3 Supplier self-audit certificate to be issued to the Client in accordance with the Contract	100% if certificate confirmed. 0% if no certificate confirmed	Confirmation of receipt and time of receipt by the Client
1.4 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report	100% if no Action Plan is required 100% if all actions since last audit have been delivered to plan. 66% if one or two actions are late 33% if three or four actions are late 0% if more than 4 actions are late	Confirmation by the Client of completion of the actions by the dates identified in the Audit Report
<b>2. Operational Efficiency / Price Savings</b>		

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2.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Contract Period via continuous improvement and innovation	100% if the Supplier has met all due objectives from the Supplier Action Plan (SAP) 75% if the Supplier is up to one month late in meeting one or more objective 50% if the Supplier is upto two months late in meeting one or more objective 25% if the Supplier is up to three months late in meeting one or more objective 0% if the Supplier is over 3 months late in meeting one or more objective	Confirmation by the Client of the cost savings achieved by the dates identified in the Supplier Action Plan
<b>3. Demand Management Savings</b>		
3.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Contract Period continuous improvement and innovation	100% if the Supplier has met all due objectives from the Supplier Action Plan (SAP) 75% if the Supplier is up to one month late in meeting one or more objective 50% if the Supplier is up to two months late in meeting one or more objective 25% if the Supplier is up to three months late in meeting one or more objective 0% if the Supplier is over 3 months late in meeting one or more objective	Confirmation by the Client of the cost savings achieved by the dates identified in the Supplier Action Plan
<b>4. Customer Satisfaction</b>		

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4.1 Services to be provided under Enabling Agreements to the satisfaction of the Enabling Authorities	0% to 100% from Customer Satisfaction Survey	Confirmation by the Client of the Supplier's performance against customer satisfaction surveys
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## SCHEDULE 10 - VALUE FOR MONEY

### 1. DEFINITIONS

1.1. In this Schedule, the following expressions shall have the following meanings:

<b>"Benchmarked Rates"</b>	means the Booking Fees for the Benchmark Services
<b>"Benchmark Review"</b>	means a review of the Services carried out in accordance with this Schedule to determine whether those Services represent Good Value
<b>"Benchmarked Services"</b>	means any Services included within the scope of a Benchmark Review pursuant to this Schedule
<b>"Comparable Rates"</b>	means rates payable by the Comparison Group for Comparable Services that can be fairly compared with the Booking Fees
<b>"Comparable Supply"</b>	means the supply of Services to another customer of the Supplier that are the same or similar to the Services
<b>"Comparable Services"</b>	means Services that are identical or materially similar to the Benchmark Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Supplier shall propose an approach for developing a comparable Services benchmark
<b>"Comparison Group"</b>	means a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations
<b>"Equivalent Data"</b>	means data derived from an analysis of the Comparable Rates and/or the Comparable Services (as applicable) provided by the Comparison Group
<b>"Good Value"</b>	means that the Benchmark Rates are within the Upper Quartile

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**"Upper Quartile"**

means, in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services

**2. BACKGROUND**

- 2.1. The Supplier acknowledges that the Client wishes to ensure that the Services, represent value for money to the taxpayer throughout the Contract Period.
- 2.2. This Schedule 7 sets out the following processes to ensure the Contract value for money throughout the Commencement Period and subsequently while any Enabling Agreements remain in force:

Benchmarking;  
Continuous Improvement;

**3. BENCHMARKING**

**3.1. Frequency Purpose and Scope of Benchmark Review**

- (a) The Supplier shall carry out Benchmark Reviews of the Services when so requested by the Client.
- (b) The Client shall not be entitled to request a Benchmark Review during the first Contract Year of the Contract nor at intervals of less than six (6) Months after any previous Benchmark Review. The Client is only entitled to hold two (2) Benchmarking Reviews during the Initial Contract Period.
- (c) The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.
- (d) The Services that are to be the Benchmarked Services will be identified by the Client in writing.

**3.2. Benchmarking Process**

- (a) The Supplier shall produce and send to the Client for Approval, a draft plan for the Benchmark Review.
- (b) The plan must include:
  - (i) a proposed timetable for the Benchmark Review;
  - (ii) a description of the benchmarking methodology to be used;

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- (iii) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and
  - (iv) a description of how the Supplier will scope and identify the Comparison Group.
- (c) The Client must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Client may not unreasonably withhold or delay its Approval of the draft plan and any suggested amendments must be reasonable.
- (d) Where the Client suggests amendments to the draft plan under paragraph 3.2(c) above, the Supplier must produce an amended draft plan. Paragraph 3.2(b) shall apply to any amended draft plan.
- (e) Once it has received the Approval of the draft plan, the Supplier shall:
  - (i) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:
    - (A) market intelligence;
    - (B) the Supplier's own data and experience;
    - (C) relevant published information; and
    - (D) pursuant to paragraph 3.2(g) below, information from other suppliers or purchasers on Comparable Rates;
  - (ii) by applying the adjustment factors listed in paragraph 3.2(g) below and from an analysis of the Comparable Rates, derive the Equivalent Data;
  - (iii) using the Equivalent Data to calculate the Upper Quartile;
  - (iv) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- (f) The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.
- (g) In carrying out the benchmarking analysis the Supplier may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

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- (i) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- (ii) exchange rates;
- (iii) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

### 3.3. **Benchmarking Report:**

- (a) For the purposes of this Schedule “**Benchmarking Report**” shall mean the report produced by the Supplier following the Benchmark Review and as further described in this Schedule;
- (b) The Supplier shall prepare a Benchmarking Report and deliver it to the Client, at the time specified in the plan Approved pursuant to paragraph 3.2(c) above, setting out its findings. Those findings shall be required to:
  - (i) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;
  - (ii) if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and
  - (iii) include sufficient detail and transparency so that the Client can interpret and understand how the Supplier has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.
- (c) The Parties agree that any changes required to the Contract and/or the Enabling Agreements, as applicable, identified in the Benchmarking Report may be implemented at the direction of the Client in accordance with the Variation Procedure..
- (d) The Client shall be entitled to publish the results of any benchmarking of the Booking Fees to all of the Enabling Authorities.

## 4. **CONTINUOUS IMPROVEMENT**

- (a) The Supplier shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Client the Services and the manner in which it is providing the Services with a view to reducing the Client's costs, the costs of the Enabling Authorities (including the Booking Fees) and/or improving the



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quality and efficiency of the Services. The Supplier and the Client will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

- (b) Without limiting paragraph 4(a) above **Error! Reference source not found.**, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Booking Fees produced by the Supplier pursuant to this Schedule 7 under all Enabling Agreements and reducing the Booking Fees (without adversely affecting the performance of the Contract or any Enabling Agreement) during that Contract Year ("**Continuous Improvement Plan**") for the approval of the Client. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
- (i) identifying the emergence of new and evolving technologies which could improve the Services;
  - (ii) identifying changes in behaviour at Enabling Authorities that result in a cost saving and a reduction in the Booking Fees;
  - (iii) improving the way in which the Services are sold via the Enabling Agreements that may result in reduced Booking Fees;
  - (iv) identifying and implementing efficiencies in the Supplier's internal processes and administration that may lead to cost savings and reductions in the Booking Fees;
  - (v) identifying and implementing efficiencies in the way the Client and/or Enabling Authorities interact with the Supplier that may lead to cost savings and reductions in the Booking Fees;
  - (vi) identifying and implementing efficiencies in the Supplier's supply chain that may lead to cost savings and reductions in the Booking Fees;
  - (vii) baselining the quality of the Supplier's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Contract Period; and
  - (viii) measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Services, and identifying opportunities to assist Enabling Authorities in meeting their sustainability objectives.
- (c) The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Client for approval within ninety (90) Working Days of the first Order or six (6) Months

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following the Commencement Date of the Contract, whichever is earlier.

- (d) The Client shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Client's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Client a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Client, the programme shall constitute the Continuous Improvement Plan for the purposes of the Contract.
- (e) Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4(d) above:
  - (i) the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - (ii) the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Client and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.
- (f) The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in paragraph 4(b) above.
- (g) All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Booking Fees.
- (h) Should the Supplier's costs in providing the Services to Enabling Authorities be reduced as a result of any changes implemented by the Client and/or Enabling Authorities, all of the cost savings shall be passed on to Enabling Authorities by way of a consequential and immediate reduction in the Booking Fees for the Services.

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## SCHEDULE 11- ANNUAL SELF-AUDIT CERTIFICATE

**[Drafting Note: To be signed by Head of Internal Audit, Finance Director or company's external auditor]**

Dear Sirs

In accordance with the Contract entered into on **[insert Framework Commencement Date dd/mm/yyyy]** between **[insert name of Supplier]** and the Client, we confirm the following:

1. In our opinion based on the testing undertaken **[name of Supplier]** has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Contract.
2. We have tested the systems for identifying and reporting on contract activity and found them to be operating satisfactorily.
3. We have tested a sample of **[ ] [insert number of sample transactions tested]** [Orders] and related invoices during our audit for the financial year ended **[insert financial year]** and confirm that they are correct and in accordance with the terms and conditions of the Contract.
4. We have tested from the order processing and invoicing systems a sample of **[ ] [insert number of sample transactions tested]** public sector orders placed outside the Contract during our audit for the financial year ended **[insert financial year]** and confirm they have been identified correctly as orders placed outside the Contract, an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised and mandated procurement processes executed by the Client.
5. We have also attached an Audit Report which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

Name:.....

Signed:.....

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:.....

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Professional                      Qualification                      held                      by  
Signatory:.....

**[Drafting Note / Note to Suppliers: where the Client identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this behaviour goes beyond poor commercial practice and will seek further guidance from the Treasury Solicitor's Department.]**

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## SCHEDULE 12- COMMERCIALLY SENSITIVE INFORMATION

### 1. INTRODUCTION

- 1.1. In this Schedule 12 the Parties have sought to identify the Supplier's Confidential Information (including such Confidential Information as it may relate to or be provided under the Enabling Agreements) that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA (including in relation to any Confidential Information as it may relate to or be provided under the Enabling Agreements if applicable for the purposes of the relevant exemption).
- 1.2. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.3. Without prejudice to the Clients' obligation to disclose Information in accordance with FOIA or Clause xx (Freedom of Information), the Client will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
	<i>[insert date]</i>	<i>[insert details]</i>	<i>[insert duration]</i>

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## **SCHEDULE 13– MANAGEMENT INFORMATION**

### **1. GENERAL REQUIREMENTS**

- 1.1. The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Client in accordance with the provisions of this Schedule.
- 1.2. The Supplier shall also supply such Management Information as may be required by a Enabling Authority in accordance with the terms of an Enabling Agreement.

### **2. MANAGEMENT INFORMATION AND FORMAT**

- 2.1. The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Client which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Schedule E.
- 2.2. The Client may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier. The Client shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3. If the MI Reporting Template is amended by the Client at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Client.
- 2.4. The Client may provide the Supplier with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly MI Report in accordance with any such guidance.
- 2.5. The Supplier may not make any amendment to the current MI Reporting Template without the prior Approval of the Client.
- 2.6. The Client shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Client.
- 2.7. The Supplier shall provide a full list of Enabling Authorities accessing the Contract and the Enabling Agreements to the Client, including the start and end date of all signed Enabling Agreements, and Enabling Authority contact details, to the Client no later than the 14th of each month.

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### 3. FREQUENCY AND COVERAGE

- 3.1. All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Client on or prior to the Reporting Date every Month during the Contract Period and thereafter, until all transactions relating to Enabling Agreements have permanently ceased.
- 3.2. The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.
- 3.3. The Supplier must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "**Nil Return**").
- 3.4. The Supplier must inform the Client of any errors or corrections to the Management Information:
  - (a) in the next MI Report due immediately following discovery of the error by the Supplier; or
  - (b) as a result of the Client querying any data contained in an MI Report.

### 4. SUBMISSION OF THE MONTHLY MI REPORT

- 4.1. The completed MI Report shall be completed electronically and returned to the Client by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.
- 4.2. The Client reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

### 5. DEFECTIVE MANAGEMENT INFORMATION

- 5.1. The Supplier acknowledges that it is essential that the Client receives timely and accurate Management Information pursuant to this Contract because Management Information is used by the Client to inform strategic decision making and allows it to calculate the Management Charge.
- 5.2. Following an MI Failure the Client may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Client. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

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### Meetings

- 5.3. The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Client (without prejudice to any other rights the Client may have). If the Client requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Supplier's performance.

### Admin Fees

- 5.4. If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Client shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5 below) in respect of any MI Failures as they arise in subsequent Months.
- 5.5. If, following activation of the Client's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.4 above, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Client shall not be prevented from exercising such right again during the Contract Period if the conditions in paragraph 5.4 above are met.
- 5.6. The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Client as a result of the Supplier failing to supply Management Information as required by this Contract.
- 5.7. The Client shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.4 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause A12 of the Contract as a supplement to the Management Charge. Any exercise by the Client of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Contract.

## 6. DEFAULT MANAGEMENT CHARGE

- 6.1. If:
- (a) Two (2) MI Failures occur in any rolling six (6) Month period; or
  - (b) Two (2) consecutive MI Failures occur;
- then a "**MI Default**" shall be deemed to have occurred.
- 6.2. If an MI Default occurs the Client shall (without prejudice to any other rights or remedies available to it under this Contract) be entitled to determine the level of Management Charge in accordance with paragraph 6.3 below, which the Supplier shall be required to pay to the Client ("**Default Management Charge**") and/or to terminate this Contract.



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6.3. The Default Management Charge shall be calculated as the higher of:

- (a) the average Management Charge paid or payable by the Supplier to the Client based on any Management Information submitted in the six (6) Month period preceding the date on which the MI Default occurred or, if the MI Default occurred within less than six (6) Months from the commencement date of the first Call Off Agreement, in the whole period preceding the date on which the MI Default occurred; or
- (b) the sum of five hundred pounds (£500).

6.4. If an MI Default occurs, the Client shall be entitled to invoice the Supplier the Default Management Charge (less any Management Charge which the Supplier has already paid to the Client in accordance with Clause A12 of the Contract for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

- (a) in arrears for those Months in which an MI Failure occurred; and
- (b) on an ongoing Monthly basis,

until all and any MI Failures have been rectified to the reasonable satisfaction of the Client.

6.5. For the avoidance of doubt the Parties agree that:

- (a) the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause A12 of the Contract; and
- (b) any rights or remedies available to Client under this Contract in respect of the payment of the Management Charge shall be available to the Client also in respect of the payment of the Default Management Charge.

6.6. If the Supplier provides sufficient Management Information to rectify any MI Failures to the satisfaction of the Client and the Management Information demonstrates that:

- (a) the Supplier has overpaid the Management Charges as a result of the application of the Default Management Charge then the Supplier shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable; or
- (b) the Supplier has underpaid the Management Charges during the period when a Default Management Charge was applied, then the Client shall be entitled to immediate payment of the balance as a debt together with interest pursuant to Clause [A12] of the Contract.

## **7. REPORTS FOR THE ENABLING AUTHORITIES UNDER ANNEX 4 (REPORTS OF THE ENABLING AGREEMENTS)**

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- 7.1. The Supplier shall report to the Enabling Authorities the total number of Enabling Authorities' accommodation non arrivals (no shows) that has resulted in the accommodation venue applying charges by the 14th of each month.
- 7.2. The Supplier shall provide a completed monthly report, as detailed in Annex 4 (Reports) of the Enabling Agreement to the Enabling Authorities, by the 14th of each month. The Supplier shall also provide an Annual Return to the Client, by the 14th April each Contract Year.
- 7.3. The Supplier shall provide a secure, central MI portal within the Supplier's Online Booking System I to enable the Enabling Authorities to self-access their MI Reports, or shall agree an alternative secure communication method as specified by the Enabling Authorities at the Commencement Date of the Enabling Agreement.
- 7.4. The Supplier shall provide timely, full, accurate and complete MI Reports to the Enabling Authorities which incorporates the data, in the correct format, as required by the Enabling Agreements.
- 7.5. The Supplier shall make transactional data available to and accessible by the Enabling Authorities within the 24 hours of the transaction taking place.
- 7.6. The Supplier shall ensure that the MI relating to each Enabling Agreement is sufficiently robust to support audit requirements both of the Client and the Enabling Authorities.
- 7.7. The Supplier shall ensure that MI data provided to the Enabling Authorities is accurate, and processes are in place to monitor and continuously improve data accuracy.
- 7.8. The MI portal shall allow the Enabling Authorities to extract reports in either Excel or CSV format.
- 7.9. The Supplier shall report monthly performance against the Service Levels to each Enabling Authority.
- 7.10. The MI portal shall allow the Enabling Authorities to produce their own tailored multi-dimensional reports using any and / or all of the reporting fields as set out in [Annex 4 (Reports) of the Enabling Agreements] [Annex 4 – MI Reporting Fields of the Specification in Schedule 2 (Services)].
- 7.11. The Supplier shall provide a monthly report to each Enabling Authority reporting CO2 emissions for all transacted Services where such information is available.
- 7.12. Where accurate and specific emissions data is known these should be applied, but in any case the methodology used to calculate carbon emissions will be based on the Suppliers' best available information; the methodology and conversion factors applied shall be as set out in the DEFRA Government

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Conversion Factors for Company Reporting, for the relevant time period (see link below):

<http://www.ukconversionfactorscarbonsmart.co.uk/>

and shall be in line with the principles set out in the DEFRA “Environmental Reporting Guidelines: including mandatory CO2 emissions reporting guidance” as updated, which may be found here:

**<https://www.gov.uk/measuring-and-reporting-environmental-impacts-guidance-for-businesses>**

- 7.13. Information for flights shall be submitted broken down into domestic; short haul and long haul as per the DEFRA guidance and shall be provided as two separate figures; one with Radiative Forcing (RF) and one without.
- 7.14. Figures for business travel shall be used as appropriate unless specifically reporting on Well to Tank (WTT) Travel, in which case such figures shall be clearly distinguished and reported separately.

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## SCHEDULE 14- GOVERNANCE

### 1. INTRODUCTION

- 1.1. The following definitions shall apply in addition to the definitions contained in the Schedule 1 (Definitions):

<b>"CEDR"</b>	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Counter Notice"</b>	has the meaning given to it in paragraph 6.5(2) of Schedule 14 (Governance);
<b>"Exception"</b>	means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of the Contract or in the supply of the Services;
<b>"Expedited Dispute Timetable"</b>	means the accelerated timetable for the resolution of disputes as set out in paragraph 6.1(6) of Schedule 14 (Governance);
<b>"Expert"</b>	means the person appointed by the Parties in accordance with paragraph 6.4(2) of Schedule 14 (Governance);
<b>"Mediation Notice"</b>	has the meaning given to it in paragraph 6.2(2) of Schedule 14 (Governance);
<b>"Mediator"</b>	means the independent third party appointed in accordance with paragraph 6.3(2) of Schedule 14 (Governance);
<b>"Supplier Contract Manager"</b>	has the meaning given to it in paragraph 2.1 of Schedule 14 (Governance);
<b>"Supplier Review Meetings"</b>	has the meaning given to it in paragraph 2.6 of Schedule 14 (Governance);

- 1.2. The successful delivery of the Contract and the Enabling Agreements will rely on the ability of the Supplier and the Client in developing a strategic relationship immediately following the conclusion of the Contract with the Supplier and maintaining this relationship throughout the Contract Period.
- 1.3. To achieve this strategic relationship, there will be a requirement to adopt proactive management activities which will be informed by quality Management Information, and the sharing of information between the Supplier and the Client.
- 1.4. This Schedule outlines the general structures and management activities that the Parties shall follow during the Contract Period.

### 2. MANAGEMENT

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### **Management Structure:**

- 2.1. The Supplier shall provide a suitably qualified nominated contact (the **“Supplier Contract Manager”**) who will take overall responsibility for delivering the Services required within the Contract, as well as a suitably qualified deputy to act in their absence.
- 2.2. The Supplier shall put in place a structure to manage the Contract in accordance with Schedule 9 (Key Performance Indicators).
- 2.3. A full governance structure for the Contract will be agreed between the Parties during the Contract implementation stage.
- 2.4. Following discussions between the Parties following the Commencement Date of the Contract, the Client shall produce and issue to the Supplier a draft Supplier Action Plan. The Supplier shall not unreasonably withhold its agreement to the draft Supplier Action Plan. The Supplier Action Plan shall, unless the Client otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the draft Supplier Action Plan.
- 2.5. The Supplier Action Plan shall be maintained and updated on an ongoing basis by the Client. Any changes to the Supplier Action Plan shall be notified by the Client to the Supplier. The Supplier shall not unreasonably withhold its agreement to any changes to the Supplier Action Plan. Any such changes shall, unless the Client otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the Client’s notification.

### **Supplier Review Meetings**

- 2.6. Regular performance review meetings will take place at the Client’s premises throughout the Contract Period and thereafter until the expiry of the Contract (**“Supplier Review Meetings”**).
- 2.7. The exact timings and frequencies of such Supplier Review Meetings will be determined by the Client following the conclusion of the Contract. It is anticipated that the frequency of the Supplier Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.
- 2.8. The purpose of the Supplier Review Meetings will be to review the Supplier’s performance under the Contract and the Enabling Agreements, where applicable, the Supplier’s adherence to the Supplier Action Plan. The agenda for each Supplier Review Meeting shall be set by the Client and communicated to the Supplier in advance of that meeting.
- 2.9. The Supplier Review Meetings shall be attended, as a minimum, by the Client Representative(s) and the Supplier Contract Manager.

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- 2.10. The Client can nominate a representative of the relevant Enabling Authorities to attend the Supplier Review Meetings and the Supplier shall accept and not object to such attendance.

### **3. KEY PERFORMANCE INDICATORS**

- 3.1. The KPIs applicable to the Contract are set out in Schedule 9 (Key Performance Indicators).
- 3.2. The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
- 3.3. The Client shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil the Contract.
- 3.4. The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.5 above, and the review and ongoing monitoring of KPIs will form a key part of the Contract management process as outlined in this Schedule.
- 3.5. The Client reserves the right to adjust, introduce new, or remove KPIs throughout the Contract Period, however any significant changes to KPIs shall be agreed between the Client and the Supplier.
- 3.6. The Client reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

### **4. EFFICIENCY TRACKING PERFORMANCE MEASURES**

- 4.1. The Supplier shall cooperate in good faith with the Client to develop efficiency tracking performance measures for the Contract. This shall include but is not limited to:
- 4.1(1) tracking reductions in product volumes and product costs, in order to demonstrate that the Enabling Authorities are consuming less and buying more smartly;
- 4.1(2) developing additional KPIs to ensure that the Contract supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).
- 4.2. The list in paragraph 4.1 above is not exhaustive and may be developed during the Contract Period.
- 4.3. The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Client and the Supplier. Such metrics

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shall be incorporated into the list of KPIs set out in Schedule 9 (Key Performance Indicators).

- 4.4. The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Schedule.

## **5. ESCALATION PROCEDURE**

- 5.1. In the event that the Client and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Client Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 5.2. In cases where the Client Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the Dispute Resolution Procedure set out in Clause 6 below.

## **6. DISPUTE RESOLUTION PROCEDURE**

### **6.1. Introduction**

#### **6.1(1)** If a Dispute arises then:

**6.1(1)(a)** the Client Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

**6.1(1)(b)** if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

#### **6.1(2)** The Dispute Notice shall set out:

**6.1(2)(a)** the material particulars of the Dispute;

**6.1(2)(b)** the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

**6.1(2)(c)** if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 6.1(6) below, the reason why.

**6.1(3)** Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under the Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Schedule.

**6.1(4)** Subject to paragraph 6.2(2) below, the Parties shall seek to resolve Disputes:

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**6.1(4)(a)** first by commercial negotiation (as prescribed in paragraph 6.2 below);

**6.1(4)(b)** then by mediation (as prescribed in paragraph 6.3 below); and

**6.1(4)(c)** lastly by recourse to arbitration (as prescribed in paragraph 6.5 below) or litigation (in accordance with Clause **xx** (*Governing Law and Jurisdiction*)).

Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6.4 below) where specified under the provisions of the Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.4 below.

**6.1(5)** In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Client.

**6.1(6)** If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 6.1(5) above or is otherwise specified under the provisions of the Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Schedule:

**6.1(6)(a)** in paragraph 6.2(2)(c), ten (10) Working Days;

**6.1(6)(b)** in paragraph 6.3(2), ten (10) Working Days;

**6.1(6)(c)** in paragraph 6.4(2), five (5) Working Days; and

**6.1(6)(d)** in paragraph 6.5(2), ten (10) Working Days.

**6.1(7)** If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

## **6.2. Commercial Negotiations**

**6.2(1)** Following the service of a Dispute Notice, the Client and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Client's [*insert role*] and the Supplier's [*insert role*], such discussions being commercial negotiations.

**6.2(2)** If:

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**6.2(2)(a)** either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or

**6.2(2)(b)** the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 6.2; or

**6.2(2)(c)** the Parties have not settled the Dispute in accordance with paragraph 6.2(1) above within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 6.3 below.

### **6.3. Mediation**

**6.3(1)** If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into the Contract.

**6.3(2)** If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.

**6.3(3)** If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

**6.3(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 procedure for variations under the Contract and in accordance with Schedule 16 (Variation of Contract Form) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

### **6.4. Expert Determination**

**6.4(1)** If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.

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**6.4(2)** The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

**6.4(3)** The Expert shall act on the following basis:

**6.4(3)(a)** he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

**6.4(3)(b)** the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;

**6.4(3)(c)** 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/her 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;

**6.4(3)(d)** 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;

**6.4(3)(e)** the process shall be conducted in private and shall be confidential; and

**6.4(3)(f)** the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **6.5. Arbitration**

**6.5(1)** The Client may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.5(3)(c).

**6.5(2)** Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Client of its intentions and the Client shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a **"Counter Notice"**) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.5(4) below or be subject to the jurisdiction of the courts in accordance with Clause **Error! Reference source not found.** (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

**6.5(3)** If:

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- 6.5(3)(a)** the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.5(4) below shall apply;
- 6.5(3)(b)** the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause [xx] (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.5(3)(c)** the Client does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.5(2) above, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.5(4) below or commence court proceedings in the courts in accordance with Clause [xx] (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.5(4)** In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.5(1) to 6.5(3) above, the Parties hereby confirm that:
- 6.5(4)(a)** all disputes, issues or claims arising out of or in connection with the Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.5(4)(e), 6.5(4)(f) and 6.5(4)(g) below);
- 6.5(4)(b)** the arbitration shall be administered by the LCIA;
- 6.5(4)(c)** the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.5(4)(d)** if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.5(4)(e)** the chair of the arbitral tribunal shall be British;
- 6.5(4)(f)** the arbitration proceedings shall take place in London and in the English language; and
- 6.5(4)(g)** the seat of the arbitration shall be London.

## **6.6. Urgent Relief**

- 6.6(1)** Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

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**6.6(1)(a)** for interim or interlocutory remedies in relation to the Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

**6.6(1)(b)** where compliance with paragraph 6.1(1) above and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

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## **SCHEDULE 15-SUB-CONTRACTORS**

In accordance with Clause A25 of the Contract, the Supplier is entitled to sub-contract its obligations under the Contract and any and all Enabling Agreements entered into pursuant to the Contract, to the Key Sub-Contractors listed below:

**[Drafting Note: The list of Key Sub-Contractors to be agreed and set out here prior to signature of the Contract]**

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## SCHEDULE 16 - VARIATION OF CONTRACT FORM

**[Drafting Note: This Variation of Contract Form cannot be entered into or executed by the Supplier and any Enabling Authority. The Variation of Contract Form can only be entered into by the Client and the Supplier.]**

**CONTRACT TITLE:**

**CONTRACT REF:**

**VARIATION No:**

**DATE:**

**BETWEEN:**

The Crown Commercial Service (hereinafter referred to as “the Client”) & ***[Insert Supplier name]*** (hereinafter referred to as “the Supplier”)

1. The Supplier acknowledges and agrees that each Variation of Contract Form requires the prior approval of the Client in relation to any changes to or in connection with the Enabling Agreements.

2. The Contract is varied as follows:

1. Words and expressions in this Variation shall have the meanings given to them in the Contract.

2. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

CCS – Contract for the provision of [Crown Travel and Management Services] [Crown Venue Management Services]

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**SIGNED:**

For: The Client

For: The Contractor

By:

By:

Full Name:

Full Name:

Title:

Title:

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## SCHEDULE 17 - EXIT

**[Drafting Note: This Schedule is still a “working draft”. Please note that a separate exercise will need to be carried out after the issue of the ITT but prior to signature of the Contract to ensure that: (1) the content aligns with the new Contract / Enabling model; (2) the content of this Schedule aligns with and uses the definitions in Schedule 1 (Definitions); (3) that the cross-references and numbering are correct; and (4) there are no conflicts between the provisions and processes in this Schedule and those that may be set out elsewhere in the Contract, other Schedules and/or the Enabling Agreement.]**

### 1. DEFINITIONS

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

<b>"Exclusive Assets"</b>	means those Supplier Assets used by the Supplier or a Key Sub-Supplier which are used exclusively in the provision of the Services;
<b>"Exit Information"</b>	has the meaning given to it in paragraph 4.1 of this Schedule;
<b>"Exit Manager"</b>	means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule for managing the Parties' respective obligations under this Schedule;
<b>"Net Book Value"</b>	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;
<b>"Non-Exclusive Assets"</b>	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Supplier in connection with the Services but which are also used by the Supplier or Key Sub-Supplier for other purposes;
<b>"Registers"</b>	means the register and configuration database referred to in paragraphs (a) and (b) of this Schedule;
<b>"Termination Assistance"</b>	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance



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	Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in paragraph 6.1 of this Schedule;
<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 Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule;
<b>"Transferable Assets"</b>	means those of the Exclusive Assets which are capable of legal transfer to the Customer;
<b>"Transferable Contracts"</b>	means the Sub-Contracts, licences for Supplier Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in paragraph (a) of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in paragraph (c) of this Schedule.

## 2. INTRODUCTION

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

## 3. OBLIGATIONS DURING THE CALL OFF CONTRACT PERIOD TO FACILITATE EXIT

- 3.1. During the Call Off Contract Period, the Supplier shall:
  - (a) create and maintain a Register of all:
    - (i) Supplier Assets, detailing their:
      - (A) make, model and asset number;

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- (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
  - (C) Net Book Value;
  - (D) condition and physical location; and
  - (E) use (including technical specifications); and
- (ii) 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;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- (c) agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2. The Supplier shall:

- (a) procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract; and
- (b) (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party IPR and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Customer.

3.3. Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph (b) of this Schedule which the Supplier proposes to enter into after the Call Off Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an

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alternative Sub-Supplier or provider of goods and/or services to which the relevant agreement relates.

- 3.4. Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Schedule and each Party's compliance with it.

#### **4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

- 4.1. On reasonable notice at any point during the Call Off Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
  - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - (c) an inventory of Customer Data in the Supplier's possession or control;
  - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - (f) all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
  - (g) such other material and information as the Customer shall reasonably require,
- (together, the **"Exit Information"**).
- 4.2. The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that

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such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 of this Schedule disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

4.3. The Supplier shall:

- (a) notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

4.4. The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.

4.5. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

## 5. EXIT PLAN

5.1. The Supplier shall, within three (3) months after the Call Off Commencement Date, deliver to the Customer an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;
- (b) complies with the requirements set out in paragraph 5.3 of this Schedule;
- (c) is otherwise reasonably satisfactory to the Customer.

5.2. 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.

5.3. Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:

Crown [Travel Booking  
and Management  
Services] [Venue  
Management Services]  
Final ITT Version

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- (a) how the Exit Information is obtained;
- (b) the management structure to be employed during both transfer and cessation of the Services;
- (c) the management structure to be employed during the Termination Assistance Period;
- (d) a detailed description of both the transfer and cessation processes, including a timetable;
- (e) how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (f) details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
- (g) proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;
- (h) proposals for providing the Customer or a Replacement Supplier copies of all documentation:
  - (i) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
  - (ii) relating to the use and operation of the Services;
- (i) proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- (j) proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Supplier);
- (k) proposals for the disposal of any redundant Services and materials;

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- (l) procedures to deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to Schedule 11 (Staff Transfer);
- (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- (n) proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

## 6. TERMINATION ASSISTANCE

- 6.1. The Customer shall be entitled to require the provision of Termination Assistance at any time during the Call Off Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the Call Off Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Assistance is required;
  - (b) the nature of the Termination Assistance required; and
  - (c) the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.
- 6.2. The Customer shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

## 7. TERMINATION ASSISTANCE PERIOD

- 7.1. Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:

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- (a) continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;
  - (b) in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;
  - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph (b) of this Schedule without additional costs to the Customer;
  - (d) provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
  - (e) at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.
- 7.2. Without prejudice to the Supplier's obligations under paragraph (c) of this Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph (b) of this Schedule without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.
- 7.3. If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

## 8. TERMINATION OBLIGATIONS

- 8.1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 8.2. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Supplier shall:
- (a) cease to use the Customer Data;

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- (b) provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
- (d) return to the Customer such of the following as is in the Supplier's possession or control:
  - (i) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;
  - (ii) any equipment which belongs to the Customer;
  - (iii) any items that have been on-charged to the Customer, such as consumables; and
  - (iv) all Customer Property issued to the Supplier under Clause **Error! Reference source not found.** of this Call Off Contract (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
  - (v) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;
- (e) vacate any Customer Premises;
- (f) remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
- (g) provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
  - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
  - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of



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the Supplier actually incurred in responding to requests for access under this paragraph.

- 8.3. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 8.4. Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## 9. ASSETS AND SUB-CONTRACTS

- 9.1. Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

- (a) terminate, enter into or vary any Sub-Contract;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the provision of Services.

- 9.2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph (e) of this Schedule, the Customer shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
- (b) which, if any, of:
  - (i) the Exclusive Assets that are not Transferable Assets; and
  - (ii) the Non-Exclusive Assets,

the Customer and/or the Replacement Supplier requires the continued use of; and

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- (c) which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the “**Transferring Contracts**”),

in order for the Customer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or the Replacement Goods and/or Replacement Services.

- 9.3. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.
- 9.4. Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 9.5. Where the Supplier is notified in accordance with paragraph (b) of this Schedule that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
  - (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - (b) procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.6. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 9.7. The Customer shall:

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- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - (b) once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 9.8. The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.
- 9.9. The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

## 10. SUPPLIER PERSONNEL

- 10.1. The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 11 (Staff Transfer) shall apply.
- 10.2. The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Supplier.
- 10.3. During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.
- 10.4. The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5. The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier, unless approval has been obtained from the Customer which shall not be unreasonably withheld.

## 11. CHARGES

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

## 12. APPORTIONMENTS

- 12.1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
  - (b) the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2. Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Schedule as soon as reasonably practicable.



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## **PART A**

### **A PART A PROVISIONS**

#### **A1 Initial Contract Period**

A1.1 The Enabling Agreement shall take effect on the Commencement Date of the Enabling Agreement and shall continue for the Initial Contract Period of the Contract. The Enabling Agreement shall continue (i) until its expiry or expiry of any extension period of the Enabling Agreement or termination, all of which shall be determined by the terms of the Contract; or (ii) unless the Enabling Agreement is terminated in accordance with the terms of the Enabling Agreement provided always that such termination is escalated to the Client and the Supplier for resolution in accordance with the Dispute Resolution Procedures in Schedule 14 (Governance) of the Contract, as more particularly described in Clause A19.4 of the Contract.

#### **A2 Beneficiaries – the Enabling Authority**

A2.1 The Supplier acknowledges and agrees that the rights and benefits of the Client as set out in the Clause of Part A of the Contract are not solely for the benefit of the Client and will, where applicable, also be for the benefit of the Enabling Authority. The Enabling Authority will be a Third Party Beneficiary under the Contract in respect of every term of Part A, as more particularly described in Clause A6 of the Contract.

#### **A3 Beneficiaries – the Client**

A3.1 The Enabling Authority and the Client agree that the Client is a beneficiary under the Enabling Agreement and has a right to enforce the relevant terms of the Enabling Agreement in accordance with Clause B35.12.

#### **A4 Performance of the Services**

A4.1 The Supplier shall provide the Services in accordance the terms of the Enabling Agreement, including Schedules 1 (Definitions) to 6 (Staff Transfer and Pensions).

#### **A5 Termination and Dispute Resolution Procedure**

A5.1 Notwithstanding any other provision of the Enabling Agreement, the Parties agree that any termination right that either the Supplier and/or an Enabling Authority may wish to exercise under the Enabling Agreement, shall be escalated to the Client and the Supplier for resolution in accordance with Dispute Resolution Procedure in Schedule 14 (Governance) of the Contract. The Parties agree that the relevant Enabling Agreement cannot be terminated unless and until the Dispute Resolution Procedure is followed in accordance with this Clause A5.1 and Clause A19.4 of the Contract.

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A5.2 Notwithstanding any other provision of the Enabling Agreement, in respect of all Disputes that are being attempted to be resolved in accordance with the terms of the Enabling Agreement, if such Dispute has not been resolved by the end of the commercial negotiation phase under Clause xx of the Enabling Agreement, such Dispute shall be escalated to the Client and the Supplier for resolution in accordance with Dispute Resolution Procedure in Schedule 14 (Governance). For the avoidance of doubt, the escalation pursuant to this Clause A5.2 to the Client and the Supplier under Schedule 14 (Governance) shall commence at the level beginning at paragraph 6.1(2) of Schedule 14 (Governance).

**A6 Consent of the Client**

A6.1 The Parties agree that any changes that need to be made to the Enabling Agreement (including prior to its execution by the Parties) shall require the prior written approval of the Client. Such prior written approval shall be in accordance with Schedule 16 (Variation of Contract Form). Any amendment made in the Enabling Agreement or an attempt in the Enabling Agreement to amend the Contract shall be void and of no effect unless such amendment has been made in accordance with this Clause A6.1

A6.2 The Enabling Authority and the Supplier shall seek the Client's written approved prior to entering into an Enabling Agreement. Such prior written approval shall be in accordance with Schedule 16 (Variation of Contract Form).

A6.3 The Enabling Authority and the Supplier shall not agree or incorporate any Special Requirements in Annex 1 (Special Requirements) without the prior written approval of the Client. Such prior written approval shall be in accordance with Schedule 16 (Variation of Contract Form).

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## **PART B**

### **B PART B PROVISIONS**

#### **B1 Incorporation of the Clauses of Part B of the Contract**

B1.1 Save as otherwise set out in Part C below, from the Commencement Date of the Enabling Agreement, the Clauses of Part B of the Contract are incorporated into this Part B of the Enabling Agreement.

#### **B2 Incorporation of Schedule 1 (Definitions) to Schedule 6 (Staff Transfer and Pensions)**

B2.1 Save as otherwise set out in Part C below, from the Commencement Date of the Enabling Agreement, Schedule 1 (Definitions) to Schedule 6 (Staff Transfer and Pensions) of the Contract are incorporated into the Enabling Agreement as Schedule 1 (Definitions) to Schedule 6 (Staff Transfer and Pensions) of the Enabling Agreement.



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## **PART C**

### **C PART C PROVISIONS**

#### **C1 Changes to Clauses of Part B of the Contract**

- C1.1 Unless otherwise stated in this Part C, all references to “Client” and “Contract” in the Clauses of Part B of the Contract shall, as incorporated into the Enabling Agreement in accordance with Part B of the Enabling Agreement, unless the context requires otherwise, be regarded as references to the “Enabling Authority” and “Enabling Agreement”, respectively.
- C1.2 Unless otherwise stated in this Part C, all references to “Commencement Date” in the Clauses of Part B of the Contract shall, as incorporated into the Enabling Agreement in accordance with Part B of the Enabling Agreement, unless the context requires otherwise, be regarded as references to the “Commencement Date” of the Enabling Agreement.
- C1.3 For the purposes of incorporation into the Enabling Agreement Clause B35.12(a) shall also be deemed to include the Client as a Third Party Beneficiary in respect of Clause A3 of the Enabling Agreement.
- C1.4 The Dispute Resolution Procedure for the Enabling Agreement is the same as the Dispute Resolution Procedure set out in paragraph 6 of Schedule 14 (Governance) of the Contract save that if the Dispute between the Enabling Authority and the Supplier is not resolved after the commercial negotiations phase described in paragraph 6.2(1) Schedule 14 (Governance), the Parties will escalate such unresolved dispute to the Client and the Supplier for resolution under the Dispute Resolution Procedure of the Contract in accordance with Clause A19.5.
- C1.5 **[any further changes to Part B?]**

**[Drafting Note: The Client is continuing to check if there are any other differences that need to be added to this Part C in relation to the Clauses of Part B of the Contract as incorporated into the Enabling Agreement.]**

#### **C2 Changes to Schedule 1 (Definitions) to Schedule 6 (Staff Transfer and Pensions)**

##### **C2.1 [Changes to Schedules 1 to 6]**

**[Drafting Note: The Client is continuing to check if there are any other differences that need to be added to this Part C in relation to Schedules 1 to 6 as incorporated into the Enabling Agreement.]**

CCS – Contract for the provision of [Crown Travel and Management Services] [Crown Venue Management Services]

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Signed for and on behalf of the Enabled Authority, **[name of the Enabling Authority]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

My position is \_\_\_\_\_ and I confirm that I have authority to sign this Enabling Agreement on behalf of **[name of the Enabling Authority]**.

Date: \_\_\_\_\_

Signed for and on behalf of **[Supplier]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## **ANNEX 1 - Special Requirements**

**[Drafting Note: This Annex will only require population if the Enabling Authority and the Supplier wish to clarify or provide further detail in relation to the existing Services. It cannot be used to change the terms of the Enabling Agreement and/or the Contract.]**

The Parties confirm that the Client's prior written consent in accordance with Schedule 16 (Variation of Contract Form) has been obtained in relation to the requirements set out below in this Annex 1:

[                      ]

[                      ]

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## **Annex 2 – Pick List**

**[Drafting Note: Similar to Schedule 2 (Services), there are 4 separate Pick Lists set out in the ITT documentation. The relevant Pick List that relates to the Services under this Contract will be added here, depending on which Services have been awarded to the Supplier under this tender process.]**

**[Drafting Note: At the time an Enabling Authority signs the Enabling Agreement, it will use the Pick List set out in this Annex to select which of the Services set out in Schedule 2 it wishes to receive.]**

**[Drafting Note: Please note that a separate exercise will need to be carried out after the issue of the ITT but prior to signature of the Contract to ensure the content of each of the Pick Lists aligns with the definitions in Schedule 1 (Definitions), that the cross-references and numbering are correct, and that there are no conflicts between the content of the Pick Lists and those that may be set out elsewhere in the Contract or the Enabling Agreement.]**

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### **ANNEX 3 –Outline Implementation Plan**

**[Drafting Note: The Outline Implementation Plan will be populated in accordance with the terms of Schedule 7 (Implementation Plan), including the time limits for turning it into the detailed Implementation Plan for each Enabling Agreement.]**

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## ANNEX 4 – Reporting

**[Drafting Note: In addition to the content specified in Paragraph 7 of Schedule 13 (Management Information), any further MI reports and information required by the Enabling Authorities will be defined and mutually agreed during the implementation phase and set out in this Annex.]**

1. Accurate, timely and comprehensive Management Information (MI) will be required by the Enabled Authority to effectively manage the Contract.
2. In accordance with Paragraph 7 of Schedule 13 (Management Information), the Supplier shall provide the following MI reports to the Enabling Authority:
  - 2.1. [ ]
  - 2.2. [ ]
3. In addition to the MI reports and information set out above in this Schedule, the Enabling Authority and the Supplier agree that the Supplier shall provide the following MI reports and information to the Enabling Authority:
  - 3.1. [ ]
  - 3.2. [ ]

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## **ANNEX 5 – Key Personnel**

**[Drafting Note: The Key Personnel and Key Roles will be listed in this Annex in accordance with Clause B2 of the Contract.]**

### **1. General**

1.1. The Supplier has assigned the following Key Personnel to the Enabling Agreement in the Key Roles detailed below:

1.1(1) [Key Roles]; and

1.1(2) [Key Personnel].

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## **ANNEX 6 Transferring Employees**

**[Drafting Note: The Transferring Employees will be listed in this Annex prior to signature of the Enabling Agreement in accordance with the terms of Schedule 6 (Staff Transfers and Pensions).]**