

**SERVICES AGREEMENT**

**Morgan Lewis**

**CONDOR HOUSE  
5-10 ST PAUL'S CHURCHYARD  
LONDON EC4M 8AL  
TEL: 020 3201 5000**

## TABLE OF CONTENTS

### Clauses

|    |                                                                                                |     |
|----|------------------------------------------------------------------------------------------------|-----|
| 1  | OBJECTIVES AND INTERPRETATION .....                                                            | 4   |
| 2  | CONDITIONS PRECEDENT AND DEED OF GUARANTEE , DUE DILIGENCE AND STATUS OF PRIME AND CHIEF ..... | 5   |
| 3  | TERM.....                                                                                      | 10  |
| 4  | STATUS OF PRIME AND CHIEF AGREEMENTS .....                                                     | 10  |
| 5  | SERVICES .....                                                                                 | 11  |
| 6  | VPAAS MVE READINESS DEADLINES .....                                                            | 16  |
| 7  | PERFORMANCE STANDARDS .....                                                                    | 19  |
| 8  | CHARGES.....                                                                                   | 26  |
| 9  | INVOICING AND PAYMENT.....                                                                     | 31  |
| 10 | SUPPLIER AND CUSTOMER ACCOMMODATION .....                                                      | 32  |
| 11 | ASSETS AND CUSTOMER THIRD PARTY CONTRACTS .....                                                | 37  |
| 12 | SOFTWARE AND PROPRIETARY RIGHTS .....                                                          | 38  |
| 13 | EMPLOYEES .....                                                                                | 44  |
| 14 | SUBCONTRACTORS AND THIRD PARTIES .....                                                         | 44  |
| 15 | PLANS AND DELAYS .....                                                                         | 44  |
| 16 | RELIEF, COMPENSATION AND FORCE MAJEURE EVENTS.....                                             | 46  |
| 17 | CONTRACT MANAGEMENT .....                                                                      | 51  |
| 18 | CHANGES TO SERVICES.....                                                                       | 53  |
| 19 | AUDITS AND RECORD KEEPING .....                                                                | 53  |
| 20 | SECURITY .....                                                                                 | 53  |
| 21 | CUSTOMER DATA AND HMRC CUSTOMER DATA.....                                                      | 53  |
| 22 | DATA PROTECTION, FREEDOM OF INFORMATION AND TRANSPARENCY.....                                  | 56  |
| 23 | CONFIDENTIALITY .....                                                                          | 70  |
| 24 | OFFICIAL SECRETS ACTS.....                                                                     | 76  |
| 25 | CORRUPT GIFTS, CONFLICTS OF INTEREST AND MODERN SLAVERY .....                                  | 76  |
| 26 | REPRESENTATIONS AND WARRANTIES .....                                                           | 79  |
| 27 | INDEMNITIES.....                                                                               | 84  |
| 28 | LIMITATION OF LIABILITY .....                                                                  | 90  |
| 29 | TERMINATION.....                                                                               | 95  |
| 30 | INSURANCE AND RISK.....                                                                        | 99  |
| 31 | DISPUTE RESOLUTION AND CHOICE OF LAW .....                                                     | 99  |
| 32 | GENERAL .....                                                                                  | 101 |
| 33 | FINANCIAL DISTRESS.....                                                                        | 109 |
| 34 | COLLABORATION .....                                                                            | 109 |

**Schedules**

- Schedule 1 (Interpretation and Definitions)
- Schedule 2 (Services)
- Schedule 3 (Projects and Rate Based Services)
- Schedule 4 (Service Measurement)
- Schedule 5 (Charges)
- Schedule 6 (Invoicing)
- Schedule 7 (Change Control Procedure)
- Schedule 8 (Governance)
- Schedule 9 (Reporting)
- Schedule 10 (Audit Access)
- Schedule 11 (Financial Distress)
- Schedule 12 (Security)
- Schedule 13 (Standards and Regulations)
- Schedule 14 (Employees and Subcontractors)
- Schedule 15 (Accommodation)
- Schedule 16 (Insurance)
- Schedule 17 (Collaboration)
- Schedule 18 (Services Recipients)
- Schedule 19 (Deed of Guarantee)

## SERVICES AGREEMENT

**THIS AGREEMENT** is made on 30 September 2020

### BETWEEN

- (1) **The Commissioners for Her Majesty's Revenue and Customs** whose address is 100 Parliament Street, London, SW1A 2BQ, acting as part of the Crown ("**Customer**"); and
- (2) **Fujitsu Services Limited**, a company registered in England and Wales with a registered office address of 22 Baker Street, London W1U 3BW and with company number 00096056 (the "**Supplier**"),

(together the "**Parties**").

### RECITALS

- A. The Customer and Supplier are parties to an agreement dated 5 January 2004 (as amended from time to time) for the provision by the Supplier to the Customer of various IT and related services (the "**Prime Agreement**").
- B. The Customer and Supplier are parties to an agreement dated 8 January 2009 (as amended from time to time) for the provision by the Supplier to the Customer of services in relation to the Customer's CHIEF System (the "**CHIEF Agreement**").
- C. The Parties wish to consolidate and extend the VPaaS services from Schedule 35 of the Prime Agreement with extended services under the CHIEF Agreement into a new agreement which holistically contains the terms and conditions applicable to the Services now to be provided by the Supplier to the Customer.
- D. Accordingly the Parties are entering into this Agreement to provide the Customer with the Services, which are comprised of the Prime VPaaS Services, the CHIEF VPaaS Services, the Modernisation Services and the Application Services, as all these terms are defined herein.
- E. In light of the above, the Parties agree that in accordance with the terms of separate deeds agreed between them and the terms of this Agreement:
  - (i) the scope of services set out in Schedule 35 relating to the Supplier's Prime VPaaS Services is to be removed from the Prime Agreement and be replaced by this Agreement; and
  - (ii) this Agreement replaces in its entirety the CHIEF Agreement.

### AGREED TERMS

#### **1 OBJECTIVES AND INTERPRETATION**

##### **1.1 Interpretations and Definitions**

- (a) In this Agreement:

- (i) interpretations are set out in Schedule 1 (**Interpretation and Definitions**); and
- (ii) unless the contrary intention appears, capitalised terms shall have the meaning set out in Schedule 1 (**Interpretation and Definitions**).

## **2 CONDITIONS PRECEDENT AND DEED OF GUARANTEE , DUE DILIGENCE AND STATUS OF PRIME AND CHIEF**

### **2.1 *Redacted***

### **2.2 Due Diligence**

- (a) Prior to providing any new Modernisation Services or Application Services that are in addition those Services specified in Schedule 2 (**Services**), the Supplier acknowledges that it:
  - (i) save where stated otherwise in any agreed proposal for such services, has made and shall make its own enquiries to satisfy itself, where reasonably possible, as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
  - (ii) has raised all relevant due diligence questions with the Customer before the commencement of such services; and
  - (iii) has agreed to provide such services in reliance on its own due diligence and the information provided by the Customer as part of the due diligence process undertaken prior to the provision of such services (including in response to questions raised by the Supplier), without prejudice to the Supplier's obligations under Clauses 2.1(a)(i) and 2.1(a)(ii).
- (b) Any disputes relating to due diligence shall be resolved in accordance with Schedule 8 (**Governance**) and Clause 31 (**Dispute Resolution and Choice of Law**).
- (c) In respect of any new Modernisation Services, the Parties agree that the Supplier has undertaken due diligence activities in respect of source and object code of the relevant VPaaS Refresh Applications only to the extent that such code has been provided to the Supplier prior to agreement in respect of such Modernisation Services.
- (d) Notwithstanding the due diligence undertaken by the Supplier in respect of the relevant VPaaS Refresh Applications under Clause 2.1(c) above, the Parties acknowledge that there may be legacy issues with the source and object code of such VPaaS Refresh Applications and, in light of this, agree that the Customer shall be responsible for all risk and liability arising out of or in connection with issues (other than those caused by the Supplier's breach of its obligations under the Prime Agreement) with the source and object code of such VPaaS Refresh Applications that were pre-existing prior to the modernisation of such VPaaS Refresh Applications pursuant to the Modernisation Services.
- (e) Customer warrants and represents that it has used all reasonable endeavours

to ensure that all information provided to Supplier to which Clause 2.1(a)(i) applies is accurate and free from material errors.

- (f) Customer shall, within a reasonable period of time, reply to all due diligence questions raised by the Supplier.
- (g) As part of the due diligence undertaken by the Supplier, the Customer has confirmed that it shall not breach any provision in this Agreement relating to its permitted use of the Supplier's Intellectual Property Rights licensed pursuant to this Agreement (including any related VME licence). This confirmation extends to that those granted access by the Customer to VME and Vitae and all related documents have also complied with the Customer's obligations relating to its use of the Supplier's Intellectual Property Rights and rights of confidentiality.
- (h) The Customer acknowledges that immediately prior to the Effective Date, the Supplier provides the Prime VPaaS Services and CHIEF VPaaS Services to the Customer under the Prime Agreement and CHIEF Agreement (respectively) and that the Parties have agreed that, from the Effective Date, the VPaaS Services provided under this Agreement shall be essentially the same as the equivalent services provided under Schedule 35 of the Prime Agreement and CHIEF Agreement (respectively) and provided that they are essentially the same, the Customer agrees that, as at the Effective Date, the VPaaS Services are suitable to meet the Customer's requirements.

### 2.3 Status of Prime and CHIEF

- (a) The Parties acknowledge the agreement that the Parties documented as part of CCN FS610 to the Prime Agreement, and that:
  - (i) from the Effective Date, CCN FS610 shall be considered terminated, and superseded by this Agreement such that any rights granted and obligations imposed by CCN FS610 are extinguished and replaced in their entirety by the rights and obligations set out in this Agreement; and
  - (ii) if there has been any performance of service or payment of related charges under CCN FS610 which has taken place after the Effective Date, such performance and payments shall be deemed to have been undertaken or made pursuant to this Agreement.
- (b) The Parties further acknowledge that, following the Effective Date, the relevant services shall not be provided under the Prime Agreement and the CHIEF Agreement as explained in the Deeds of Termination and Variation.

## 3 **TERM**

- 3.1 This Agreement shall come into force and effect from the Effective Date and shall, unless terminated in accordance with the terms of this Agreement, continue in force thereafter until 30 June 2025 (the "**Term**").
- 3.2 The Parties agree that the terms and conditions of this Agreement offered by the Supplier to the Customer for the Services under this Agreement are specific to the

relationship of the Parties as at the Effective Date. As such, the Parties agree that the Services and such terms and conditions may not be available and/or may not be capable of being rolled forward beyond the Term of this Agreement.

#### **4 STATUS OF PRIME AND CHIEF AGREEMENTS**

##### **4.1 On the Effective Date:**

- (a) the scope of the Prime Agreement that was subject to Schedule 35 (VPaaS Services) shall terminate, and such termination shall constitute a partial termination of the Prime Agreement, without cause or payment of any termination for convenience charges. Separately, the Parties acknowledge that they shall document such necessary contractual documentation under the Prime Agreement as is necessary to reflect such partial termination; and
- (b) the CHIEF Agreement shall terminate, without cause or payment of any convenience charges and be replaced by this Agreement. The Parties confirm that entry into this Agreement by the Parties constitutes termination of the CHIEF Agreement by the Parties, and notwithstanding that they have not followed the related formalities set out in the CHIEF Agreement in respect of its termination.

##### **4.2 As of the Effective Date:**

- (a) in respect of any issue, including any potential breach or Claim relating to the services which were provided pursuant to Schedule 35 of the Prime Agreement, where the relevant cause of action first arose prior to the Effective Date, then, subject to Clause 4.3, the consequences of, and any liability for, such issue (including any relevant losses or other liability arising from the same cause of action after the Effective Date) shall be dealt with and resolved pursuant to the terms of and in accordance with the Prime Agreement;
- (b) in respect of any issue, including any potential breach or Claim relating to the CHIEF Agreement, where the relevant cause of action first arose prior to the Effective Date, then, subject to Clause 4.3, the consequences of, and any liability for, such issue (including any relevant losses or other liability arising from the same cause of action after the Effective Date) shall be dealt with and resolved pursuant to the terms of and in accordance with the CHIEF Agreement; or
- (c) in respect of any issue relating to the VPaaS Services under this Agreement, where the relevant cause of action first arose on or after the Effective Date then, subject to Clause 4.3, such issue shall be dealt with and resolved in accordance with this Agreement (including any relevant losses or other liability accruing before the Effective Date) and not under the Prime Agreement or CHIEF Agreement.

- 4.3 If, in respect of any issue, there is ambiguity as to when a cause of action first arose and thus whether a Claim should be commenced under Clauses 4.2(a) , 4.2(b) or 4.2(c) then the relevant Party may plead its case in the alternative and in doing so will not prejudice the legal efficacy of the Claim in any way. Notwithstanding this right regarding the commencement of a Claim, in the situation envisaged by this Clause 4.3, the relevant Party shall only be entitled to proceed with one Claim under one of Clauses

4.2(a), 4.2(b) or 4.2(c).

4.4 The Parties:

- (a) acknowledge the removal of the applicable services from the Prime Agreement, and the agreed reduction in the charges under the Prime Agreement, all as documented in the Prime Removal CCN;
- (b) agree that, notwithstanding such removal of services and charges under the Prime Agreement, certain of the Prime VPaaS Services being provided under this Agreement shall continue to be paid for pursuant to the Prime Agreement as such Prime VPaaS Services also relate to the services under the Prime Agreement (the "**Discontinued Prime Services**"); and
- (c) agree that, if the Prime Agreement expires or terminates during the Term, then the Prime Charges Element shall become payable to cover the costs of the Discontinued Prime Services in accordance with the provisions of Section 7 of Schedule 5 (**Charges**).

## 5 **SERVICES**

### 5.1 **Scope of Supplier Services**

- (a) Commencing on the Effective Date, the Supplier shall provide the "**Services**" comprising:
  - (i) replacement VPaaS services from Schedule 35 of the Prime Agreement (the "**Prime VPaaS Services**"), as set out in Schedule 2 (**Services**) Part 4;
  - (ii) replacement services for the CHIEF Agreement (the "**CHIEF VPaaS Services**"), as set out in Schedule 2 (**Services**) Part 3;
  - (iii) application modernisation and transformation services (the "**Modernisation Services**") (which shall be Project Services delivered pursuant to an agreed Project), as set out in Schedule 2 (**Services**) Part 5;
  - (iv) associated application and other services (the "**Application Services**") as set out in Schedule 2 (**Services**) Part 6; and
  - (v) Project Services delivered pursuant to agreed Projects,

in each case, as the same may evolve during the Term and as they may be supplemented, enhanced, modified or replaced in accordance with this Agreement but excluding any services, responsibilities or functions that are expressly identified in this Agreement as the Customer's responsibility or a third party's responsibility.
- (b) Such Services are:
  - (i) the services, functions and responsibilities specified in this Agreement, including Schedule 2 (**Services**);



- (ii) any services, functions and responsibilities agreed as New Services in accordance with the Change Control Procedure; and
  - (iii) any services, functions and responsibilities (including any incidental services, functions or responsibilities) not specified in this Agreement as within the scope of the Supplier's responsibilities, but reasonably and necessarily required for the proper performance and provision of the services, functions and responsibilities set out in this Clause 5.1(b).
- (c) The Supplier shall provide the Services from the Effective Date and during the Term in accordance with this Agreement and any agreed implementation plans for any New Services.
- (d) In respect of Projects, the Parties shall comply with their respective obligations as set out in Schedule 3 (**Projects and Rate Based Services**).
- (e) The Supplier undertakes that in the performance of the Services, including the VPaaS Environment Refresh, that it shall not charge the Customer for its technology refresh activities in respect of the VPaaS Platform. The Parties acknowledge that to the extent the Customer requires changes to the VPaaS Platform to accommodate its technology refresh activities which are outside the scope of this Agreement (for example, upgrades to VME Applications or as arising from a data centre move), such changes shall be addressed as Projects.

## 5.2 Services Performed by the Customer or Third Parties

- (a) This Agreement does not give, or purport to give, the Supplier any rights of exclusivity in relation to the Services, New Services or services or requirements that are similar to the Services, other than the Supplier's defacto exclusivity in respect of those components of the Services identified in the Advert.
- (b) The Parties agree that the Supplier shall provide the Application Services and Modernisation Services on a non-exclusive basis and that the Customer may, at its sole discretion, retain third parties to perform the Application Services or the Modernisation Services or any element thereof, subject always to compliance with its obligations in respect of the Supplier's IPR and Confidential Information.
- (c) To the extent that the Customer performs, or retains third parties to perform, any service pursuant to the terms of Clause 5.2(b) above and such service is in substitution for an element of the Services, the Supplier shall co-operate with the Customer and such third parties to ensure (so far as it is reasonably able to do so within the scope of the Services) that such services are able to be carried out in a co-ordinated, effective and timely manner. In the case of services that formed part of the Services, such Supplier co-operation shall include, as necessary to enable such services to be performed:
  - (i) permitting access to Customer Assets and Customer Data and HMRC Customer Data to the extent that:
    - (A) the same are in the possession or under the control of the Supplier; and

- (B) such access is permitted under any underlying agreements with third parties and applicable Law;
- (ii) providing such information regarding the Services as a person with reasonable commercial skills and technical expertise would find reasonably necessary to perform the services in question; and
- (iii) complying with its obligations in Schedule 17 (**Collaboration**),

provided that the Customer shall procure that such third party shall, where necessary for the performance of the service:

- (A) prior to the commencement of such service:
  - 1) enter into any appropriate confidentiality undertaking;
  - 2) agree to maintain confidentiality in respect of Supplier confidential information; and
  - 3) acknowledge and agree not to infringe the Supplier's Intellectual Property Rights,

and, where appropriate, the Supplier shall itself enter into an appropriate confidentiality undertaking in favour of such third party;

- (B) comply (whilst on the premises of, or accessing the equipment of, the Supplier and/or Subcontractors) with the Supplier's and/or the Subcontractors' reasonable health and safety, security, confidentiality and related policies as notified by the Supplier from time to time (and, where appropriate, the Supplier shall itself agree to comply (whilst on the premises of, or accessing the equipment of, the third party and/or its subcontractors and agents) with the third party's reasonable health and safety, security, confidentiality and related policies as notified by the third party from time to time);
  - (C) comply at all times with the Supplier's security, confidentiality and related policies as notified by the Supplier from time to time; and
  - (D) comply with the reasonable and applicable work standards, methodologies and procedures that have been provided to the Customer by the Supplier in advance.
- (d) If an act or omission of a third party retained by the Customer to perform any service in substitution for all or an element the Services (pursuant to clause 5.2(b)) may cause a problem or delay in the provision of the Services by or on behalf of the Supplier and/or the Subcontractors:
- (i) the Supplier shall notify the Customer as soon as is reasonably practicable; and

- (ii) thereafter the Supplier shall promptly work with the Customer to prevent or circumvent such problem or delay,

provided that where such problem or delay is caused by such third party which has been retained by the Customer, the Customer shall remain responsible for such problem or delay as if it were its own.

### 5.3 Services Recipients

#### General

- (a) The Supplier shall provide the Services for the benefit of the Customer and, to the extent specified in the Agreement (including Schedule 18 (**Services Recipients**)), indirectly via the Customer to the Services Recipients. Prior to provision of the Services for the benefit of the Services Recipients they shall have first each acknowledged that in consideration of the provision to the Services Recipient of the Services, the Services Recipient has agreed to be bound by the terms of this Agreement.
- (b) The Parties agree that Services Recipients are not third party beneficiaries for the purposes of this Agreement, and are not intended to have any right to enforce any of the provisions of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- (c) To the extent the Supplier performs the Services for the benefit of Services Recipients:
  - (i) the Customer will be the Supplier's single point of contact regarding such Services. All instructions in respect of Services Recipients shall be given on their behalf by the Customer who has the Services Recipients' ostensible authority in respect of such matters;
  - (ii) the Services are to be provided to Services Recipients in the United Kingdom, save where a Services Recipient specified in Schedule 18 (**Services Recipients**) is specified to be located outside of the United Kingdom, whereby the Customer gives its express permission for the Supplier to provide such Services for that Services Recipient who is outside of the United Kingdom. All restrictions regarding provision of data or the Services outside of the United Kingdom set out in this Agreement shall not apply to the provision of data or Services to such Services Recipient in the territory identified in Schedule 18 (**Services Recipients**) for that Services Recipient; and
  - (iii) the Customer will be liable to the Supplier for the acts or omissions of the Services Recipients, including, to the extent they breach the Customer's obligations under this Agreement or obligations that are otherwise stated in this Agreement to apply to such Services Recipients (other than the obligation to pay the Charges which remains with the Customer), as if they were acts or omissions of the Customer.
- (d) By allowing a Services Recipient to receive the Services, the Customer is deemed to have confirmed that the Services Recipient has agreed to observe the terms of this Agreement and in particular the terms of this Clause 5.3.

- (e) The Customer shall ensure that all Services Recipients are subject to a duty of confidentiality to the Supplier which is at least the same as the Customer's duty of confidentiality to the Supplier under this Agreement.

#### Addition and Removal of Services Recipients

- (f) The Customer may add new Services Recipients to, or remove existing Services Recipients from, the scope of this Agreement by providing written notice to the Supplier and updating Schedule 18 (**Services Recipients**), including confirmation that, in consideration of the receipt of the benefit of the Services, the Services Recipient has agreed to be bound by the terms of this Agreement. The Supplier may reject the addition of a Services Recipient if the provision of the Services for the benefit of that proposed new Services Recipient would reasonably be expected to result in:
  - (i) a breach of an applicable Law;
  - (ii) the imposition of additional or different applicable Law other than the Laws of England;
  - (iii) access to or use of the Services by a competitor of the Supplier; or
  - (iv) a Change other than the addition of the Services Recipient.

#### Claims by Services Recipients

- (g) All Claims in connection with the Services or otherwise in connection with this Agreement from any of the Services Recipients against the Supplier in respect of a breach of contract, tort (including negligence), breach of statutory duty or otherwise, however arising from this Agreement, shall be brought, to the extent permissible in Law, by the Customer itself on behalf of the Services Recipient and, for these purposes, any liability of the Supplier to Services Recipients under or in connection with this Agreement shall be deemed to be liability to the Customer, provided that:
  - (i) such liability shall be subject to Clause 28 (**Limitation of Liability**); and
  - (ii) the Customer complies with its indemnity obligations under Clauses 5.3(h) and 5.3(i).
- (h) Where a Services Recipient brings a Claim directly against the Supplier and the Customer has already been awarded damages from, or has agreed a settlement of said Claim with the Supplier on behalf of that Services Recipient then the Customer will indemnify the Supplier against that part of any Claim brought by the Services Recipient to the extent that the Customer has already recovered the said part from the Supplier or compromised or waived its Claims.
- (i) Where a Services Recipient brings a Claim directly against the Supplier in breach of this Clause 5.3, the Customer will indemnify the Supplier against any such Claim and all reasonable costs and expenses incurred by the Supplier in defending such Claim.

- (j) The Customer's liability under the indemnities provided by the Customer under Clauses 5.3(h) and 5.3(i) shall be subject to the limitations of the Customer's liabilities under Clause 28 (**Limitation of Liability**).

## **6 VPAAS MVE READINESS DEADLINES**

- 6.1 The Parties acknowledge that the anticipated timeline set out in the Prime Agreement and the CHIEF Agreement for the completion of the refresh of the VME Applications so that the same are capable of operation on the VPaaS Modern VME Environment of 31 December 2020 will not be met and the deadline for such refresh in those agreements delayed. In consideration of the Parties entering into this Agreement, and without any admission of fault or liability by either Party for delays prior to the Effective Date, both Parties hereby release each other in respect of any such earlier delays.
- 6.2 The Parties acknowledge that, as at the Effective Date, the revised deadlines for completion of the refresh of the applicable VME Applications so that the same are capable of operation on the VPaaS Modern VME Environment are the VPaaS Refresh Deadlines set out in Appendix A (**VME Applications**) to Schedule 2 (**Services**).
- 6.3 The VPaaS Environment Refresh shall be carried out by the Parties in accordance with the Supplier's VPaaS Environment Refresh Methodology, as set out in Appendix B (**Move to MVE**) to Schedule 2 (**Services**).
- 6.4 The Parties agree to perform their respective obligations in respect of changes required to the VPaaS Platform set out in Appendix C to Schedule 2 (**Services**) ("**VPaaS Platform Changes**") for the operation of all the VME Applications in Appendix A (**VME Applications**) to Schedule 2 (**Services**) using the CHIEF VPaaS Services and the Prime VPaaS Services irrespective of any VPaaS Environment Refresh so that the deliverables in Appendix C to Schedule 2 are achieved in accordance with Clause 6.6.
- 6.5 In respect of the VME Applications shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**), and which are subject to refresh, the Supplier agrees that from the Effective Date it shall carry out its obligations in respect of the VPaaS Environment Refresh.

### **Refresh or remove by Appendix A Dates**

- 6.6 In respect of the VME Applications shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**), the Customer agrees that from the Effective Date it shall carry out its obligations in respect of the VPaaS Environment Refresh as follows:
- (a) The Customer shall use all Commercially Reasonable Efforts to ensure that the VPaaS Platform Changes set out in Appendix C to Schedule 2 (**Services**) comprising the upgrades and activities that need to be carried out for the operation of all the VME Applications in Appendix A (**VME Applications**) to Schedule 2 (**Services**) using the CHIEF VPaaS Services and the Prime VPaaS Services are complete by the "**Complete By Dates**" identified in Appendix C to Schedule 2 (**Services**) for all VME Applications still using the CHIEF VPaaS Services and Prime VPaaS Services. The Customer undertakes to carry out work on the VPaaS Platform Changes proactively rather than reactively and to take responsibility for the Customer completing the upgrades and activities by the relevant Complete By Dates. The Customer acknowledges and agrees that completion of these VPaaS Platform Changes by the relevant Complete By

Dates are required in order for the VPaaS Environment Refresh to be ready and that in default of it completing the VPaaS Platform Changes its other activities and obligations set out in Clauses 6.6(c), 6.6(d), 6.6(e) and 6.6(g) cannot be completed.

- (b) In respect of those VME Applications shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**) as being "No-Refresh" (OAS, IRIS and BROCS), the Customer agrees to use all Commercially Reasonable Efforts to ensure that such VME Applications shall all be removed entirely from the scope of the Services by the applicable "Customer to remove by:" dates set out in Appendix A (**VME Applications**). The Parties agree that, in any event, after that date such VME Applications shall cease to be in scope of this Agreement.
- (c) In respect of the CHIEF Application, both Parties shall use all Commercially Reasonable Efforts to ensure that the CHIEF Application is ready to be Live on MVE by the VPaaS Refresh Deadline date shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**) of 31 December 2022. The Parties also agree that the VPaaS Final Refresh Deadline for the CHIEF Application is 31 January 2023.
- (d) In respect of the CESA Core Application, both Parties shall use all Commercially Reasonable Efforts to ensure that the CESA Core Application is ready to be Live on MVE by the VPaaS Refresh Deadline date shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**) of 1 September 2021. The Parties also agree that the VPaaS Final Refresh Deadline for the CESA Core Application is 31 January 2023.
- (e) In respect of the VAT Applications (VAT, VALID, VISION and VIES), both Parties shall use all Commercially Reasonable Efforts to ensure that such VAT Applications are ready to be Live on MVE by the VPaaS Refresh Deadline dates shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**) of 31 December 2022. The Parties also agree that the VPaaS Final Refresh Deadline for such VAT Applications is 30 June 2023.
- (f) In respect of the following VME Applications (LDCS, POOP, VAT Certs, Warehousing and Duty Deferment), the Parties intended to separately agree plans to deal with such VME Applications so that the same shall not be in-scope of VPaaS Environment Refresh and unless otherwise agreed by the Parties shall be out of scope of the VPaaS Services as at end of 31 December 2021.
- (g) In respect of the following VME Applications (Trade Stats and Consolidated Tariff Systems), both Parties shall use all Commercially Reasonable Efforts to ensure that such VME Applications are ready to be Live on MVE by the VPaaS Refresh Deadline dates shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**) of 31 December 2022. The Parties also agree that the VPaaS Final Refresh Deadline for such VME Application is 31 January 2023.

### **Refresh Deadlines to VPaaS Final Refresh Deadlines**

- 6.7 Subject to Clause 6.8, the Parties agree that if any of the VME Applications (including for the avoidance of doubt VAT VME Applications VAT, VALID, VISION and VIES) are not ready to be Live on MVE by the respective VPaaS Refresh Deadline Dates shown in Appendix A (**VME Applications**) to Schedule 2 (**Services**), and the Customer

cannot reasonably demonstrate that the failure to be ready by the relevant VPaaS Refresh Deadline Date was caused by the Supplier, then provided the Customer has fully met all its obligations under Appendix C to Schedule 2 (**Services**) and either:

- (a) the Customer is carrying out work that reasonably demonstrates it will remove the relevant VME Application from the scope of this Agreement by the relevant VPaaS Final Refresh Deadline; or
- (b) the Customer is carrying out work that reasonably demonstrates that it will achieve the relevant VME Application being ready to be Live on MVE by the relevant VPaaS Final Refresh Deadline,

then the Supplier shall continue to provide the Services in respect of such VME Applications beyond the relevant VPaaS Refresh Deadline for the period up to the relevant VPaaS Final Refresh Deadline, subject to the payment by the Customer of the Charges applicable for such VME Applications plus a fifty per cent (50%) increase on such Charges. Time shall be of the essence in the performance by the Customer of its obligations in respect of (a) and (b) above. In those circumstances Clause 6.10 shall also apply.

- 6.8 The Parties agree that in respect of the VAT Applications (VAT, VALID, VISION and VIES), if at the VPaaS Final Refresh Deadline of 30 June 2023 such VAT Applications are not ready to be Live on MVE by that VPaaS Refresh Deadline and the Customer cannot reasonably demonstrate that the failure to be ready by the VPaaS Refresh Deadline was caused by the Supplier, then provided the Customer has fully met all its obligations under Appendix C to Schedule 2 (**Services**) and either:

- (a) the Customer is carrying out work that reasonably demonstrates it will remove the VAT Applications (VAT, VALID, VISION and VIES) from the scope of this Agreement by the relevant VPaaS Final Refresh Deadline; or
- (b) the Customer is carrying out work that reasonably demonstrates that it will achieve the VAT Applications (VAT, VALID, VISION and VIES) being ready to be Live on MVE by the relevant VPaaS Final Refresh Deadline,

then, subject to Clause 6.11, the Supplier shall continue to provide the Services beyond the relevant VPaaS Final Refresh Deadline on a rolling monthly basis for the period up to 31 December 2023, subject to the payment by the Customer of the Charges for such VAT Applications plus an increase of one hundred per cent (100%) on such Charges for that period. Time shall be of the essence in the performance by the Customer of its obligations in respect of (a) and (b) above. In those circumstances Clause 6.10 shall also apply.

- 6.9 In respect of the VAT Applications (VAT, VALID, VISION and VIES), from the VPaaS Refresh Deadline of 31 December 2022 until 31 December 2023, the Customer shall provide Customer Reports to the Supplier on a four (4) weekly basis demonstrating that the Customer is carrying out work that will remove the VAT Applications from the scope of this Agreement by the 31 December 2023 or that the Customer is carrying out work that reasonably demonstrates that it will achieve the VAT Applications being ready to be Live on MVE by the 31 December 2023.

- 6.10 In respect of VME Applications which are not ready to be Live on MVE as at the relevant VPaaS Refresh Deadline, then for the period from the applicable VPaaS Refresh

Deadlines to the applicable VPaaS Final Refresh Deadlines (and if applicable 31 December 2023 in the case of the VAT Applications (VAT, VALID, VISION and VIES)):

- (a) the applicable Service Levels in respect of those VME Applications shall not apply save for Availability of ninety per cent (90%);
- (b) Service Credits shall not be payable; and
- (c) the Suppliers obligations shall reduce to the Supplier only using reasonable endeavours to provide the achieve ninety per cent (90%) Availability for such Services for those VME Applications.

#### **After VPaaS Final Refresh Deadlines**

- 6.11 The Customer acknowledges and agrees that nothing in this Clause 6 shall have the effect of obliging the Supplier to continue to provide VPaaS Services for any VME Application after the relevant VPaaS Final Refresh Deadlines if the VME Application has not been refreshed pursuant to the VPaaS Environment Refresh and that as a consequences, in accordance with this Clause 6, the VPaaS Services shall no longer be provided for such VME Application.

## **7 PERFORMANCE STANDARDS**

### **7.1 Service Levels**

- (a) With effect from the Effective Date, the Supplier shall provide the Services in compliance with the provisions of Schedule 4 (**Service Measurement**) and shall achieve or exceed the Service Levels in accordance with the provisions of Schedule 4 (**Service Measurement**).
- (b) With effect from the Effective Date, unless compliance with Schedule 4 (**Service Measurement**) and the Service Levels otherwise requires, the Supplier shall provide the Services:
  - (i) promptly and in accordance with Good Industry Practice;
  - (ii) in accordance with the Quality Plans;
  - (iii) using efficiently any Customer Assets, Customer facilities, Customer resources or Customer provided services necessary to provide the Services;
  - (iv) using technology which is consistent with that required to deliver the Services in accordance with a refresh policy aligned to Good Industry Practice and which policy enables the Supplier to take advantage of advancements in the global technology industry without, as a result of such refresh policy, the adoption of advancements that expose the Customer to undue risks through the use of unproven Tools, methods or products (including Software) from the global technology industry;
  - (v) using adequate numbers of personnel that:
    - (A) are appropriately experienced, qualified and trained;



- (B) are familiar with the requirements set out in this Agreement; and
  - (C) shall provide the Services with all reasonable skill, care and diligence; and
  - (vi) in compliance with all applicable Laws.
- (c) The Supplier shall maintain the Facilities used by it to provide the Services (save as set out or referred to in Schedule 15 (**Accommodation**)).
- (d) The Supplier shall maintain the Technical Infrastructure (including Supplier Software, Supplier Third Party Software and Equipment) so that they are appropriate for the provision of the Services and operate in accordance with their specifications, including:
  - (i) maintaining the Equipment in good operating condition, subject to normal wear and tear;
  - (ii) undertaking, or procuring, repairs and preventive maintenance on Equipment and performing Supplier Software and Supplier Third Party Software maintenance in accordance with the applicable manufacturer's or licensor's recommendations;
  - (iii) subject to Clause 7.9, ensuring that, at all times throughout the Term, it has in place the Technical Infrastructure which is appropriate in terms of capacity and scalability for the on-going provision of the Services in accordance with the terms of this Agreement; and
  - (iv) ensuring that it develops, refreshes and upgrades, in accordance with the terms of this Agreement, the Technical Infrastructure, Equipment, Supplier Software and Supplier Third Party Software for the continued provision of the Services.

## 7.2 Quality Assurance and Improvement Programmes

- (a) The Supplier shall maintain, after the Effective Date, quality plans that:
  - (i) ensure that all applicable aspects of the Services are the subject of relevant quality management systems;
  - (ii) are consistent with BS EN ISO 9001 or any equivalent standard which is adopted by the Supplier (including its own quality standards); and
  - (iii) meet the Customer's standards set out in Schedule 13 (**Standards and Regulations**),the "**Quality Plans**".
- (b) The Supplier shall obtain the Customer's written approval to change the Quality Plans existing pursuant to Clause 7.2(a) as at the Effective Date before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Customer's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services

are provided to the standard required by this Agreement, save to the extent that the Quality Plans contain matters required by the Customer's standards set out in Schedule 13 (**Standards and Regulations**).

- (c) The Supplier shall ensure that the Services are carried out in compliance with the Quality Plans.
- (d) Any Changes to the Quality Plans shall be dealt with in accordance with this Clause and the Change Control Procedure.
- (e) Subject to Clause 7.2(f), and unless specified otherwise in this Agreement, the Supplier shall adopt, and comply with, those technology quality and certification procedures as set out in or implemented pursuant to Schedule 13 (**Standards and Regulations**) and Schedule 12 (**Security**).
- (f) Notwithstanding the generality of Clause 7.2(e), the Supplier shall, during the Term, co-operate with the Customer to improve its provision of the Services through the introduction of Tools, procedures and other improvements in accordance with Schedule 13 (**Standards and Regulations**) so that the Services are improved over the Term. Such improvements shall be at no additional cost to the Customer (unless otherwise expressly agreed in advance) and shall include the Supplier providing continuous quality assurance as part of its total quality management process through:
  - (i) the identification and application of proven techniques and tools from other services provided within the Supplier's operations that would also benefit the Customer operationally and/or financially; and
  - (ii) the implementation of its own programmes, practices and measures (including applicable procedures enabling the Customer to measure the quality of the Supplier's performance in respect of this sub-Clause (f)) reasonably required to align to the Customer's own like programme, practices and measures and co-operate with the Customer in the implementation of the Customer's own like programme, practices and measures.

### 7.3 Periodic Service Level Reviews

At least annually during the Term, the Customer and the Supplier shall review the Service Levels and shall consider the need to make adjustments to them as appropriate (in accordance with the provisions of Schedule 4 (**Service Measurement**)) in order to improve performance capabilities associated with any advances in the technology, processes and methods used to provide the Services.

### 7.4 Failure to Perform

If the Supplier commits a Service Level Failure, the Supplier shall take the steps identified in Schedule 4 (**Service Measurement**) and shall promptly:

- (a) through reporting in accordance with Schedule 9 (**Reporting**), notify the Customer of the Service Level Failure or likely Service Level Failure;
- (b) investigate the underlying causes of the failure to meet the Service Level and

use Commercially Reasonable Efforts to preserve any data indicating the cause of the Service Level Failure;

- (c) prepare and deliver to the Customer a Report identifying the Service Level Failure and its causes;
- (d) use Commercially Reasonable Efforts to reduce the impact of the Service Level Failure, and to prevent it from recurring;
- (e) to the extent that the Supplier has caused or contributed to the Service Level Failure, address such causation or contribution so as to correct the Service Level Failure and meet the relevant Service Level in the future;
- (f) advise the Customer, as and to the extent requested by the Customer, of the status of corrective efforts being undertaken;
- (g) to the extent that any failure to achieve a Service Level has been caused by an act or omission of the Customer, a Services Recipient or a Third Party Supplier, then:
  - (i) as a separate and distinct provision to the rights and obligations of the Parties under Clause 16 of the Terms and Conditions and Section 2.7 of Schedule 4 (**Service Measurement**), the Supplier shall be relieved from its obligation to achieve the applicable Service Level, such failure shall not be a Service Level Failure and no Service Credits shall accrue in respect of such failure; and
  - (ii) the Customer shall, and shall procure that any applicable Services Recipients or Third Party Suppliers, use Commercially Reasonable Efforts to:
    - (A) minimise the impact of such failure on both the Supplier and the Customer (together with any affected Services Recipients); and
    - (B) prevent the reoccurrence of the act or omission which resulted in the such failure;
- (h) if requested by the Customer, provide to the Customer for approval a plan to identify the action that needs to be taken to rectify the Service Level Failure or to prevent the Service Level Failure from taking place or recurring. The plan shall set out all relevant information in relation to the Service Level Failure, as soon as is reasonably practicable and, in any event, within three (3) Working Days from the day the Supplier notifies the Customer under Clause 7.4(a); and
- (i) carry out the plan agreed under Clause 7.4(h) in accordance with its terms.

## 7.5 Service Credits

- (a) Where Service Credits accrue against the Supplier in accordance with Schedule 4 (**Service Measurement**), the Supplier shall give the Customer a credit by means of a reduction in the next available invoice for Service Charges or, if no further invoice is to be provided by the Supplier under the Agreement, by prompt payment to the Customer of the same.

- (b) The Supplier acknowledges and agrees that the Service Credits are a price adjustment to take into account services that are not properly delivered to the Customer and are not an estimate of the loss or damage that may be suffered by the Customer and the Services Recipients as a result of the Supplier's failure to meet any Service Level. Payment of any Service Credit by the Supplier under the Agreement is without prejudice to any entitlement that the Customer may have to damages at Law from the Supplier resulting from, or otherwise arising in respect of, any such breach of the Agreement, or to any right of the Customer to terminate the Agreement pursuant to Clause 29 below, provided that any Claim for damages resulting from a breach of the Supplier's performance obligations, in respect of which a Service Credit has already been paid, shall be reduced by the amount of that Service Credit.

## 7.6 Measurement and Monitoring Tools

The Supplier shall use the necessary measurement and monitoring tools and procedures required to measure and report the Supplier's performance against the applicable Service Levels and shall report on its performance in accordance with Schedule 9 (**Reporting**). Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify compliance with the Service Levels, and shall be subject to Audit by the Customer in accordance with Schedule 10 (**Audit Access**).

## 7.7 Customer Assistance with measurement, monitoring and reporting

Where the Supplier's ability to measure, monitor or report in accordance with its obligations under this Agreement require an act or assistance by the Customer, a Services Recipient or a Third Party Supplier, the Supplier shall be relieved from its obligations to measure, monitor or report to the extent any failure in this respect has been caused by a failure of the Customer, the applicable Services Recipient or the applicable Third Party Supplier to undertake such act or provide such assistance within a reasonable timeframe following a reasonable request by the Supplier to undertake such act or provide such assistance. Such request for additional information does not affect the Customer's obligation to provide Customer Reports.

## 7.8 Assistance to the Customer

Upon the reasonable request of the Customer, the Supplier shall provide reasonable assistance (which shall not require the Supplier to incur additional costs or expenses) to the Customer to assist the Customer to investigate and resolve incidents caused by Third Party Suppliers.

## 7.9 CHIEF Performance

- (a) The Parties acknowledge that the CHIEF VPaaS Services are provided in respect of the operation by the Customer of the CHIEF Application used by the Customer for the processing of customs and excise declarations, and related activities. The Customer acknowledges that the volume and nature of such declarations may vary significantly, on an hourly, daily and longer term basis, as a result of: (i) changes in the demand for declarations; (ii) changes in how the Customer's CHIEF Application is used by the Customer; and (iii) future changes resulting from the UK's withdrawal from the European Union. The Parties agree that all such changes are operationally the responsibility of the Customer, and the ability of the Customer to manage the declaration volumes

and the Customer's related business outcomes is dependent on how the Customer uses the CHIEF Application within the OCP Usage Limit provided by the VPaaS Platform, which is outside the scope of responsibility of the Supplier.

- (b) In respect of the CHIEF VPaaS Services and the CHIEF Technical Infrastructure, the Supplier undertakes to provide such CHIEF VPaaS Services so as to achieve the Service Levels in accordance with Schedule 4 (**Service Measurement**) using the CHIEF Technical Infrastructure.
- (c) The undertaking in Clause 7.9(b) is expressly limited to the Services within the Supplier's control and responsibility, as defined in this Agreement. Therefore, this undertaking does not extend to:
  - (i) the ability of the CHIEF Application to itself achieve or manage the workload within the OCP Usage Limit over any period, which the Parties agree is expressly outside the scope of the Supplier's responsibility; or
  - (ii) the ability of the Customer to achieve its desired business outcomes. Subject to Clause 7.9(b) above, achieving such business outcomes including in respect of volumes of declarations and the successful operation of the CHIEF Application is the responsibility of the Customer and at the Customer's risk, and the Customer is not relying on any representations or warranties from the Supplier in this respect.
- (d) The Parties acknowledge and agree that:
  - (i) there are existing CHIEF OCP Constraints that the Customer is aware of and has tested the CHIEF Application against;
  - (ii) the Customer has evaluated likely periods of high demand on the CHIEF Application annually, seasonally, monthly and daily where the CHIEF OCP Constraints may need to be planned for so that the CHIEF Application remains within the OCP Usage Limit;
  - (iii) the Customer appreciates the need for the Customer to plan for and determine how to use the CHIEF VPaaS Services to plan around such CHIEF OCP Constraints and the OCP Usage Limits in order to accommodate the Customer's existing and future operations (including batch);
  - (iv) such plans need to take account of required system downtime for maintenance and agreed Availability; and
  - (v) the performance of the CHIEF VPaaS Services will improve as a consequence of improvements to the CHIEF Technical Infrastructure that will be available when the CHIEF VPaaS Services successfully move to the MVE in accordance with the VPaaS Refresh Deadlines set out in Appendix A to Schedule 2 (**Services**).
- (e) The Customer acknowledges and accepts that the rate at which a system under either the CHIEF VPaaS Services or Prime VPaaS Services can execute GPLI whilst remaining within the OCP Usage Limit is highly dependent on the workload being executed, which the Customer controls and may vary

significantly on an hourly basis.

- (f) Pending the move of the CHIEF VPaaS Services to the MVE:
  - (i) the Parties shall continue working together to continue earlier scalability work. Such work is contracted for separately;
  - (ii) the Customer shall, through its own tests, determine how the CHIEF Application can best perform and be utilised without bottlenecks and degradation to performance given the CHIEF Technical Infrastructure and the CHIEF OCP Constraints;
  - (iii) any network and storage improvements, that might aid performance are to be agreed to by the Parties as Projects;
  - (iv) platform and processor upgrades (other than those that will be provided as part of the changes to the CHIEF Technical Infrastructure with the move to MVE), are to be agreed to by the Parties as Projects; and
  - (v) the Parties shall work together to consider the need to separate the use by the CHIEF Application during the Term into more than one instance of VME on additional infrastructure.
- (g) If in the period prior to CHIEF VPaaS Services moving to the MVE the CHIEF OCP Constraints cannot be accommodated or successfully mitigated by one or more of the actions in Clause 7.9(f) (other than as a result of a Supplier Default), such that the OCP Usage Limit is exceeded at any time and the CHIEF Application fails to be operated by the Customer within the CHIEF OCP Constraints then:
  - (i) the Supplier shall not be responsible for any failure to achieve the CHIEF VPaaS Service Levels for the period during which the OCP Usage Limit is exceeded and Service Credits shall not be payable; and
  - (ii) the Supplier shall use reasonable endeavours to meet the CHIEF VPaaS Service Levels during such period, in accordance with Schedule 4 (**Service Measurement**).
- (h) The Customer acknowledges and agrees that it will need to operate the CHIEF Application within the OCP Usage Limits and the CHIEF OCP Constraints and that, if it fails to do this, there may be performance issues with the CHIEF Application that will become public or manifest in issues in achieving timely declarations.

## **8 CHARGES**

### **8.1 General**

- (a) The Service Charges are set out in, or shall be calculated in accordance with, Schedule 5 (**Charges**) and shall also be detailed in the Pricing File. Except as expressly set out or provided for in this Agreement to the contrary, the Customer shall not be required to pay the Supplier any amounts in addition to the Service Charges for the scope of the Services. The Supplier acknowledges

that the Service Charges shall not be increased unless agreed pursuant to the provisions of Schedule 7 (**Change Control Procedure**). This Clause 8.1(a) shall not in any way operate so as to limit or be deemed to limit the rights or remedies of either Party under this Agreement or in Law in respect of any indemnities set out in the Agreement or any Losses suffered by reason of any Default.

- (b) All Service Charges due under this Agreement shall be paid in pounds sterling or such other currency as is legal tender in the United Kingdom at the relevant time.
- (c) If any Service Charges or any other amounts due to be paid from one Party to the other Party under this Agreement are not fully paid on the due date for payment, the unpaid amount shall carry interest at the rate of two per cent (2%) per annum above the Bank of England's base rate for the time being in force (after as before any judgment).

## 8.2 Pass-Through Expenses

The Customer's payment of Pass-Through Expenses shall be in accordance with, and subject to, the following:

- (a) With respect to Pass-Through Expenses for which the Parties agree that the Supplier shall act as payment agent for the Customer, the Supplier shall:
  - (i) review the invoice charges to determine the validity and accuracy of the Pass-Through Expense;
  - (ii) provide the Customer with a reasonable opportunity to review the original invoice; and
  - (iii) pay the amounts due and invoice the Customer, on the Supplier's next invoice, for the Pass-Through Expense without mark-up, fees or overhead charges of any kind unless otherwise agreed with the Customer. The Customer agrees that the Supplier may include a margin on any Pass-Through Expenses, such margin not to exceed two point zero one per cent (2.01%).
- (b) Where a particular Pass-Through Expense is to be paid directly by the Customer, the Supplier shall ensure that the original invoice for any such Pass-Through Expense shall, subject to compliance with all applicable Laws, be addressed to the Customer but sent to the Supplier and, as soon as practicable and in any event not more than four (4) Working Days following receipt of the original third party invoice, the Supplier shall:
  - (i) provide the Customer with such original third party invoice;
  - (ii) review the invoice charges to determine the validity of the Pass-Through Expenses;
  - (iii) provide the Customer with a statement that the charges are proper; and
  - (iv) where requested by the Customer, provide reasonable supporting

evidence of the Pass-Through Expenses.

- (c) With respect to services or materials paid for on a Pass-Through Expenses basis, the Customer reserves the right to:
  - (i) obtain such services or materials directly from a third party;
  - (ii) designate the third party who shall provide such services or materials;
  - (iii) require the Supplier to identify and consider multiple sources for such services or materials, or to conduct a competitive procurement; and
  - (iv) review and approve the Pass-Through Expense for such services or materials before entering into a contract for such services or materials.
- (d) Subject to Clause 8.6 below, the Customer shall not be required to pay any expenses other than those Pass-Through Expenses which are due and payable in accordance with this Clause 8.2.
- (e) If the Supplier receives a refund, credit or other rebate from a third party for a Pass-Through Expense, the Supplier shall, if appropriate, promptly notify the Customer of such refund, credit or rebate and shall, if appropriate, promptly pay the full amount of such refund, credit or rebate, as the case may be, to the Customer.
- (f) Wherever this Agreement obliges the Customer to pay any amount to the Supplier in respect of any Pass-Through Expenses incurred by the Supplier in respect of third parties:
  - (i) that obligation shall be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including where the payment is made to the Supplier or an Affiliate of the Supplier), so much of said sums as are proper and reasonable;
  - (ii) the Supplier shall, where requested by the Customer, provide reasonable supporting evidence of Pass-Through Expenses; and
  - (iii) that obligation shall not apply to any VAT incurred by the Supplier in respect of Pass-Through Expenses that it is able to recover from the Customer but that obligation shall extend to any VAT properly charged by the Supplier to the Customer on any Pass-Through Expenses.

### 8.3 Taxes – General

- (a) Each of the Customer and the Supplier shall be responsible for:
  - (i) any taxes on its property or assets;
  - (ii) any taxes on its business; and
  - (iii) any taxes based on its net income or gross receipts.
- (b) Subject to Clause 8.2(f) above, the Supplier shall be liable for any VAT and



other taxes and duties at the prevailing rates payable by the Supplier on any goods and services used or consumed by the Supplier in providing the Services where the tax is imposed on the Supplier's acquisition or use of such goods or services in its provision of the Services.

- (c) The Supplier shall be liable for VAT, stamp duty and other taxes that are assessed against or incurred on the transfer of assets from the Customer (or its nominee) to the Supplier, including the transfer of Equipment or Software, or any other good or service transferred or provided from the Customer (or its nominee) to the Supplier. The Customer will provide the Supplier with a VAT invoice to enable the Supplier to reclaim from the Customer any VAT charged by the Customer in respect of the transfer of such assets, and such invoice shall be provided by the Customer in the format and within the timescales required by Law.
- (d) The Customer shall be liable for VAT at the prevailing rates and other taxes that are assessed against or incurred by the Customer in relation to the provision of the Services by the Supplier (including any replacement goods or sales tax that is implemented in the UK) and all amounts payable under the Agreement are stated exclusive of VAT.
- (e) The Supplier shall, where applicable, provide the Customer with a VAT invoice and such invoice shall be provided by the Supplier in the format and within the timescales required by Law.
- (f) Either Party may withhold from any payments to the other Party any tax as required by Law but shall provide the other Party with a formal receipt or other document evidencing the withholding in the format and timescale required by Law, and as soon as reasonably possible after it has determined that there is an obligation to deduct withholding tax, the deducting Party shall inform the other Party of the same.
- (g) The Supplier represents and warrants that:
  - (i) in the three (3) years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established; and
  - (ii) it has notified the Customer in writing of any Tax Non-Compliance it is involved in.
- (h) If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 8.3(g)(i) and 8.3(g)(ii) has been breached, is untrue, or is misleading, it shall immediately notify the Customer of the relevant occurrence in sufficient detail to enable the Customer to make an accurate assessment of the situation.
- (i) In the event that the warranty given by the Supplier pursuant to Clause 8.3(g)(ii) has been breached, is untrue, or is misleading, such circumstances shall be deemed to be a Material Default for the purposes of Clause 29.1 (Termination by the Customer for Supplier Default or Insolvency).

#### 8.4 Promoting Tax Compliance

- (a) All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- (b) To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- (c) The Supplier shall provide to the Customer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material part of the Services under the Agreement by that agent, supplier or Subcontractor.
- (d) If, at any point during the Term, the Supplier is involved in any Tax Non-Compliance, the Supplier shall:
  - (i) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
  - (ii) promptly provide to the Customer:
    - (A) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (B) such other information in relation to the Tax Non-Compliance as the Customer may reasonably require.
- (e) The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 8.4(e) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Customer.
- (f) Upon the Customer's request, the Supplier shall provide (promptly or within such other period notified by the Customer) information which demonstrates how the Supplier complies with its Tax obligations.
- (g) If the Supplier:
  - (i) fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 8.4(b), 8.4(d)(i) and/or 8.4(f) this may be a Material Default of this Agreement;
  - (ii) fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Customer that it must not contract, or must

cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 8.4(c) on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a Material Default of the Agreement; and/or

- (iii) fails to provide details of steps being taken and mitigating factors pursuant to Clause 8.4(d)(ii) which in the reasonable opinion of the Customer are acceptable this may be a Material Default of this Agreement,

and any Material Default shall allow the Customer to terminate this Agreement pursuant to Clause 29.1 (Termination by the Customer for Supplier Default or Insolvency).

- (h) The Customer may internally share any information which it receives under Clauses 8.4(c) 8.4(d) and 8.4(f), for the purpose of the collection and management of revenue for which the Customer is responsible.

## 8.5 Changes to the Scope of VAT

The Customer shall reimburse the Supplier for Irrecoverable VAT arising during the Term. Where the Supplier wishes to claim reimbursement of Irrecoverable VAT, the Supplier shall give written notice to the Customer containing written details of the amount involved and the grounds for, and a correct computation of, the amount claimed. Following receipt of such notice, the Parties shall discuss and (subject to verification of the grounds claimed and of the Supplier's computations) agree any adjustment to the Service Charges in accordance with Schedule 5 (**Charges**) (such adjustment to be reflected in the Pricing File) so that the Service Charges will, after the adjustment has been made, leave the Supplier with the same amounts that it would have been entitled to were it not for the Irrecoverable VAT. The foregoing shall not apply to changes to the rate of VAT. The Supplier's margin shall not be recoverable against Irrecoverable VAT.

## 8.6 Incidental Expenses

Unless otherwise expressly stated in this Agreement, all expenses that the Supplier incurs in providing the Services (including travel and lodging, document reproduction, shipping, and telephone expenses) are included in the Service Charges (including the Supplier's manpower rates) as set forth in this Agreement. Accordingly, expenses are not separately reimbursable by the Customer unless, on a case-by-case basis for unusual expenses, the Customer has agreed in writing in advance to reimburse the Supplier for the expense.

## 8.7 Recovery of Sums Due

If any sum of money is recoverable from or payable by one Party (the "**Owing Party**") to the other Party (the "**Owed Party**") under the Agreement (including any sum in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Owed Party from any sum then due, or which may come due, to the Owing Party under the Agreement or under any other agreement or contract between the Parties.

## 8.8 Open Book and Value for Money

The Parties agree that the Prime VPaaS Services and CHIEF VPaaS Services and the associated Prime VPaaS Services Charges and CHIEF VPaaS Services Charges shall not be subject to any open book requirements nor any other form of value for money obligations.

## 8.9 Pricing File

The Supplier shall continue to update its Pricing File (in accordance with Section 15 of Schedule 5 (**Charges**)) to ensure that the Pricing File reflects the Service Charges, throughout the Term.

## 9 **INVOICING AND PAYMENT**

### 9.1 Invoicing

The Parties shall comply with their respective obligations as set out in Schedule 6 (**Invoicing**) throughout the Term.

### 9.2 Disputed Charges

- (a) The Customer may withhold payment of any Service Charges that it disputes in good faith, by notice in writing to the Supplier within fifteen (15) days after receipt of the relevant invoice giving its reasons and specifying any additional information required to assist in resolving its concerns.
- (b) The Supplier shall continue to perform all its obligations under this Agreement, notwithstanding any withholding of payment in accordance with Clause 9.2(a) above.
- (c) The Parties shall use Commercially Reasonable Efforts to resolve any dispute regarding the Service Charges within fifteen (15) days of it arising. If the Parties fail to so resolve the dispute, either Party may refer the matter to the Escalation Process.
- (d) Following resolution of the dispute in question:
  - (i) subject to Clause 9.2(d)(ii), any amount agreed or adjudged to be due shall promptly be paid on demand, together with interest thereon (which shall be payable for the period from when such amount was originally due had such amount not been withheld until payment) at the rate set out in Clause 8.1(c) above; and
  - (ii) if it is agreed or adjudged that there was a mistake with the invoice (or part thereof) caused by the Supplier and that:
    - (A) an adjustment is required to the amount payable by the Customer; or
    - (B) the invoice (or part thereof) should not have been raised,then the Customer shall not be liable to pay any interest on the part of the invoice that required such adjustment or that should not have been raised.

## 10 **SUPPLIER AND CUSTOMER ACCOMMODATION**

### 10.1 **Respective Obligations**

The Parties shall comply with their respective obligations as set out in Schedule 15 (**Accommodation**) during the Term.

### 10.2 **Approvals and Impact**

Save to the extent that the use at the Effective Date of Supplier-sourced Accommodation is set out in Annex 15-1 to Schedule 15 (**Accommodation**) or otherwise permitted in accordance with the terms of this Agreement, any proposal during the Term by the Supplier to use such Supplier-sourced Accommodation as part of the Services shall be subject to the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed). Where such approval is forthcoming the Supplier shall raise a CCN and the Parties shall, as part of the Impact Analysis required by Schedule 7 (**Change Control Procedure**), consider the impact of using such accommodation on the Customer's exit requirements, including (where applicable) any requirement for a specific exit plan for the accommodation in question.

### 10.3 **Supplier Data Centres**

- (a) The Parties agree and accept that, at the start of the Term, the VPaaS Services are to be delivered by the Technical Infrastructure located at the Data Centres shown in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**) ("**Current Data Centres**").
- (b) The Parties agree and accept that the Data Centres for the VPaaS Services must be appropriately located to ensure that:
  - (i) there are no interoperability problems or other similar issues impacting the successful delivery of such VPaaS Services from those Data Centres:
    - (A) as between the Data Centres in current use; and
    - (B) as between the Data Centres and other locations chosen by the Customer for the operation by the Customer or others (including the Supplier outside of this Agreement) of other Customer systems, software or infrastructure; and
  - (ii) the Data Centres' locations are suitable for Business Continuity and Disaster Recovery for the VPaaS Services by virtue of:
    - (A) their respective locations;
    - (B) their locations vis a vis other locations chosen by the Customer for the operation by or on behalf of the Customer (including by the Supplier outside of this Agreement) of other Customer systems, software or infrastructure.

As at the Effective Date the Parties are not aware of any existing interoperability or Business Continuity and Disaster Recovery problems or issues arising from the locations of the Current Data Centres.

- (c) The Customer is in the process of changing the locations, nature and operation of other services and items, including infrastructure and/or software provided to the Customer by the Supplier and other third parties and related changes to the Customer's business continuity and disaster recovery requirements. If, as a result of any such changes: (i) the Supplier is prevented from providing the VPaaS Services from the Current Data Centres in accordance with this Agreement; and/or (ii) the Supplier's costs of providing the VPaaS Services from the Current Data Centres in accordance with this Agreement are increased by five per cent (5%) or more (on either a one off, recurring or total basis); and or (iii) problems or issues arise relating to interoperability and Business Continuity and Disaster Recovery, then Clause 10.3(f) shall apply.
- (d) If the Customer requests a change of Data Centre for the delivery of the CHIEF VPaaS Services and/or Prime VPaaS Services then Clause 10.3(f) shall apply, except:
  - (i) where circumstances change in respect of the Current Data Centres. As at the Effective Date the Customer confirms that it is not aware of any Schedule 12 (**Security**) or Supplier's Business Continuity and Disaster Recovery obligations set out in the Agreement or any other reason that would justify a request for a change of Data Centre from the Current Data Centres. If the Customer's subsequent request for a change of Data Centre arises as a result of circumstances that the Customer was not aware of at the Effective Date which amount to a Supplier Default and which the Supplier fails to remedy within thirty (30) days after written notice of such Supplier Default or which cannot be remedied without the change of Data Centre (including without limitation under Schedule 12 (**Security**)) or the Supplier's Business Continuity and Disaster Recovery obligations set out in Schedule 2 (**Services**) then Clauses 10.3(g) and 10.3(f) shall apply; or
  - (ii) the Parties have agreed the change of Data Centre location and the same can be reasonably achieved in accordance with the dates in Appendix A to Schedule 2 as part of the move to MVE so that the Supplier can reasonably mitigate costs associated with such change of Data Centre location that would be met as a result of the planned build of any elements of the Technical Infrastructure, then the costs associated with a move in accordance with Clause 10.3(f) shall be adjusted accordingly.
- (e) The Customer acknowledges and accepts that a Customer request to change a single Data Centre location pursuant to Clause 10.3(d) may, as a result of Business Continuity and Disaster Recovery or other network and latency issues, require the change of other Data Centre locations and, in such cases, Clause 10.3(f) shall apply to all changes, including networks that are a consequence of any such change of location.
- (f) If the Customer requests a change of Data Centre location from the Current Data Centres or those subsequently shown in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**) whether pursuant to this Agreement or otherwise for any reason (other than those set out in Clause 10.3(d)(i)) including where the change is as a consequence to a change or development of the Prime Agreement, or where the need for a change to

Data Centre location is required pursuant to Clause 10.3(c) or 10.3(e), then this Clause 10.3(f) applies and:

- (i) any such move of Data Centre from those shown in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**), the VPaaS Services or infrastructure to a different data centre ("**New Data Centre**") shall be implemented pursuant to the Change Control Procedure and shall be subject to payment by the Customer of all Supplier costs associated with the move (plus margin at thirty per cent (30%)) and any additional Charges required to reflect any additional ongoing costs (again plus margin) arising as a consequence of the move or its consequences, provided that the applicable heads of costs and Charges have been notified to the Customer prior to the move. The Customer accepts that any move of Data Centre it requires will mean the supply, build and configuration of new infrastructure including servers, storage, and associated equipment as well as revised network connectivity and that the expenditure on the same and on the effort required will be payable in accordance with this Clause;
  - (ii) prior to undertaking any such move, the Parties shall each assess the impact of such move on the VPaaS Services and on any other services provided by the Supplier to the Customer. Both Parties shall inform each other of any potential impacts which are known to them or ought reasonably have been known to them prior to agreement of a move, so that both can make an informed decision;
  - (iii) in the event that the Supplier demonstrates with evidence that the Service Levels will not be maintained as a result of a move, then the Supplier shall have the right to object to the proposed Change unless the Parties agree such reasonable amendments to the Service Levels as are necessary to align with the level of decreased performance arising as a result of the move. In default of agreement, the Supplier's obligation shall be to use reasonable endeavours to achieve such Service Levels without requiring the Supplier to incur additional costs; and
  - (iv) unless otherwise agreed, the Customer shall be responsible for any impact of such move of Data Centre location on the VPaaS Services and any other services provided by the Supplier to the Customer unless the Supplier failed to inform the Customer of such impact (but only to the extent that this was possible in advance of the move pursuant to Clause 10.3(f)(ii)) and providing always that the Customer itself properly complied with its obligations to assess the impact of the move or otherwise knew or ought reasonably to have known of such impact prior to its agreement of the move.
- (g) The Supplier may at any time during the Term request a change to one or more of the Data Centre locations from those shown in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**). The Customer shall not unreasonably refuse or delay consent to the data centre move requested providing that the alternative proposed is:

- (i) acceptable to the Customer in accordance with its security and policy requirements;
- (ii) located in the United Kingdom;
- (iii) offers similar facilities and is of a similar or higher tier quality (as defined by recognised leading providers in the IT industry and the Uptime Institute standards); and
- (iv) is located so that network connectivity is of no lesser quality and resilience and so that there are no increased latency issues that cannot be mitigated.

Any such change requested by the Supplier in respect of Data Centre location shall be subject to Clause 10.3(h).

- (h) This Clause applies in the event that the Supplier requires or requests a change of Data Centre location from those shown in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**) whether pursuant to this Agreement or otherwise for any reason (other than Customer Default):
  - (i) prior to undertaking any such move, the Parties shall each assess the impact of such move on the VPaaS Services and in the case of the Customer the impact on any other services supplied by the Customer or its other suppliers. Both Parties shall inform each other of any potential impacts which are known to them or ought reasonably have been known to them prior to agreement of a move, so that both can make an informed decision;
  - (ii) the Supplier shall reimburse the Customer all Customer costs associated with the move which have been reasonably incurred by the Customer as a direct consequence of the change of Data Centre location, provided that the applicable heads of costs have been notified to the Supplier as a consequence of the impact assessment under sub-Clause (h)(i);
  - (iii) any such move of Data Centre from those shown in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**), the VPaaS Services or infrastructure to a New Data Centre shall be implemented pursuant to the Change Control Procedure and shall be subject to payment by the Supplier of all costs associated with the move and any additional ongoing costs arising as a consequence of the move or its consequences. The Supplier accepts that such a move of Data Centre may require the supply, build and configuration of new infrastructure including servers, storage, and associated equipment at its own expense. In the event of revised network connectivity and associated expenditure by the Customer the Supplier shall be responsible for the costs of the same less any credit for connectivity removed;
  - (iv) prior to undertaking any such move, the Supplier shall allow the Parties to assess the impact of such move on the VPaaS Services;
  - (v) in the event that the Supplier indicates or the Customer demonstrates, that an impact of a move may result in Service Levels not being



maintained then the Customer shall have the right to reject the proposed Change; and

- (vi) unless otherwise agreed the Supplier shall be responsible for any impact of such move of Data Centre on the Customer's receipt of the VPaaS Services, unless the Customer failed to inform the Supplier of such impact (but only to the extent that this was possible in advance of the move pursuant to Clause 10.3(h)(i)) and providing always that the Supplier itself properly complied with its obligations to assess the impact of the move or otherwise knew or ought reasonably to have known of such impact prior to its agreement of the move.
- (i) For the avoidance of doubt, although the Parties have begun discussions regarding the possible move of one of the current Data Centres, there is currently no complete agreement in this respect and all matters relating to such a request by the Customer for a possible Change are to be dealt with in accordance with the Change Control Procedure as a chargeable Change. As part of this process the Parties have agreed that, subject to agreement on such change and costing, the Customer would wish to complete the baseline in SDC02 for CESA and then consider a move to a different Data Centre for subsequent use. The cost to the Customer of any move will be used to inform any migration decision by the Customer. Subsequently the Parties intend that the MVE environment for CHIEF would be built away from SDC02 in order to avoid relocating infrastructure after it is built thus avoiding the costs of doing this. In respect of VAT, where some work has commenced in SDC02 the Parties will agree what work is completed and when a decision to relocate will be made depending on the potential impact on costs and timescales. A decision on any changes for all three builds, CESA, VAT and CHIEF shall be finalised as soon as possible and no later than on or before 1 March 2021. In default of such decision and a change the Supplier is entitled to assume that the Data Centres will not change. The risks associated with delaying any decision on a move against Appendix A and C dates is the Customer's.

## **11 ASSETS AND CUSTOMER THIRD PARTY CONTRACTS**

### **11.1 Assets**

- (a) Whenever, pursuant to this Clause 11.1, the Supplier transfers Equipment to the Customer (or to its nominee), the Supplier shall provide the Customer with:
  - (i) all relevant and available documentation, user manuals and other such information; and
  - (ii) suitable warranties regarding condition and performance,and (unless otherwise agreed by the Parties) the Supplier shall ensure that all leasing, rental and other similar arrangements have been fully terminated. The Supplier shall transfer full and unencumbered title (with full title guarantee) to the transferring Equipment or (if otherwise agreed between the Parties) other arrangements satisfactory to the Customer shall be implemented.
- (b) With respect to Customer owned or leased equipment which is made available by the Customer to the Supplier during the Term (in respect of which title is

not transferred to the Supplier):

- (i) the Customer grants, or shall procure the granting, to the Supplier the right to access and use such Customer owned or leased equipment (without charge) solely to the extent necessary for providing the Services during the Term;
  - (ii) the Supplier acknowledges that it has no legal or equitable claim to such Customer owned or leased equipment and agrees not to contest ownership of such Equipment;
  - (iii) the Supplier shall not, and shall not attempt to, pledge, charge, encumber or create any other interest by way of security in such Customer owned or leased equipment; and
  - (iv) to the fullest extent permitted by Law, the Supplier waives any rights which it may have to take or seek a lien over such Customer owned or leased equipment for any sums due from the Customer to the Supplier pursuant to this Agreement.
- (c) If, during the Term, the Supplier proposes the use of any Equipment to deliver the Services which the Supplier also uses to provide services to third parties ("**Shared-use Equipment**"), it shall notify the Customer in writing and seek the Customer's agreement to such use. Following receipt of such notice, the Supplier shall attempt to demonstrate to the Customer that the use of such Shared-use Equipment satisfies the security requirements (as set out in Schedule 12 (**Security**)) and the Customer's requirements in connection with its ability to avoid lock-in to the Services and to achieve a smooth and efficient exit from the Agreement. For clarity, this Clause 11.1(c) shall not apply to the Equipment used by the Supplier as at the Effective Date, which is pre-approved by the Customer.

## 11.2 Customer Third Party Contracts and Licences

- (a) Annex 2-4 (**Customer Third Party Contracts and Licences**) of Schedule 2 (**Services**) sets out the details of the Customer Third Party Contracts identified as at the Effective Date and relevant to this Agreement.
- (b) The Parties shall comply with the requirements of Annex 2-4 (**Customer Third Party Contracts and Licences**) of Schedule 2 (**Services**).

## 11.3 Equipment and Supplier Software Acquisitions during the Term

Except for the Customer Third Party Contracts, the Supplier shall acquire all Equipment and Supplier Software, including Modifications, upgrades, additions and replacements thereof, as necessary and/or appropriate to provide the Services. Such Equipment and Supplier Software shall be acquired in the name of the Supplier, and title or the benefit in any licence (as applicable) shall vest in the Supplier, unless otherwise agreed between the Parties.

## 12 SOFTWARE AND PROPRIETARY RIGHTS

### 12.1 Intellectual Property Rights existing at the Effective Date and the Third

**Transfer Date**

This Agreement shall not, and shall not be deemed to, assign or transfer to any Party any Intellectual Property Rights:

- (a) existing prior to or at the Effective Date; and/or
- (b) lawfully created by a Party independent of this Agreement,

**"Background IPRs".**

**12.2 Supplier's Intellectual Property Rights**

Except as expressly set out in this Agreement, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including the:

- (a) Supplier Software;
- (b) Supplier Third Party Software;
- (c) Supplier's Background IPRs;
- (d) Supplier Materials;
- (e) Supplier Third Party Materials; and/or
- (f) the Supplier's documentation, processes and procedures.

**12.3 Validity of Rights**

Nothing in this Agreement shall be deemed to constitute an acceptance by either Party that the particular Intellectual Property Rights claimed by the other Party are valid or enforceable and the Parties reserve their rights in Law to challenge the validity or enforceability of the same. The Customer has been put on notice and acknowledges that the Supplier claims Intellectual Property Rights and confidentiality in respect of VME and elements of it that could be needed for remediation of code written for applications running on VME should such applications be the subject of VME Remediation by the Customer or on its behalf by a third party.

**12.4 Residuals**

Nothing in the Agreement shall prevent:

- (a) the Customer from using techniques, ideas and know-how gained during the Term in the furtherance of its normal business, to the extent that this does not relate to the use or disclosure of Confidential Information and or use or infringement by the Customer of any Intellectual Property Right of the Supplier or a Subcontractor; and
- (b) the Supplier or any Subcontractor from using techniques, ideas and know-how gained during the Term in the furtherance of its normal business (including for the benefit of its existing and future customers), to the extent that this does not relate to a disclosure of Confidential Information and or use or infringement

by the Supplier or a Subcontractor of any Intellectual Property Right of the Customer or a Services Recipient.

## 12.5 Customer Software and Customer Material

- (a) The Customer shall retain all rights, title and interests in and to all Customer Software and Customer Material. Except as expressly set out in this Agreement, the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
  - (i) Customer Software;
  - (ii) Customer Third Party Software;
  - (iii) Customer's Background IPRs;
  - (iv) Customer Materials; and/or
  - (v) Customer Data.
- (b) The Customer hereby grants to the Supplier a fully paid-up, irrevocable, non-exclusive, non-transferable licence during the Term to use, operate, copy, Modify and adapt the Customer Software and the Customer Material in the Territory, only to the extent necessary for, and for the sole purpose of, providing the Services and/or performing its other obligations under this Agreement, with the right to grant non-transferable sub-licences thereunder to the Subcontractors only for such purposes. Such Customer Software and Customer Material shall, for the VME Applications, include the:
  - (i) Customer's VME Applications;
  - (ii) Customer licensed middleware;
  - (iii) Customer databases;
  - (iv) Customer documentation, processes and procedures;
  - (v) Customer know-how; and
  - (vi) Customer Data.
- (c) The Customer shall make available to the Supplier the Customer Software and the Customer Material (as reasonably required by the Supplier to be able to provide the Services) in such form and on such media as exists at the Effective Date and, in respect of Customer Software and Customer Material supplied after the Effective Date, in such form and on such media and at such time as may be agreed between the Parties or as specified in this Agreement.
- (d) The Supplier shall cease any and all use of the Customer Software and the Customer Material upon the later of:
  - (i) Termination of this Agreement; or
  - (ii) the date on which the same are no longer required in connection with

the provision of the Services.

## 12.6 Customer Third Party Software

- (a) The Customer grants to the Supplier all necessary rights and licences required by the Supplier in Customer Third Party Software in order to provide the Services.
- (b) If, as part of the VPaaS Environment Refresh, it is determined that any additional or different Customer Third Party Software (not identified as the Customer Third Party Software as at the Effective Date or within the agreed plan for VPaaS Environment Refresh) is required in order to provide the Services, then the Customer shall use Commercially Reasonable Efforts to procure all necessary rights without delay in order to grant to the Supplier all necessary rights and licences in such Customer Third Party Software. Subject always to the Customer using such Commercially Reasonable Efforts, if any failure or delay in the provision of the relevant Customer Third Party Software results in a delay to the VPaaS Environment Refresh, then the Parties shall assess such delay pursuant to the Change Control Procedure and the Customer shall be responsible for the financial or other consequences resulting from the failure or delay.

## 12.7 Intellectual Property Rights Relating to VME and the Services

- (a) The Supplier shall retain all rights, title and interests in and to all Supplier Software and Supplier Material, including all Intellectual Property Rights therein.
- (b) The Supplier grants to the Customer and the Services Recipients a non-exclusive, non-transferable right during the Term to use in the Territory:
  - (i) the Supplier Software;
  - (ii) the Supplier Material;
  - (iii) the Supplier Third Party Software;
  - (iv) the Supplier Third Party Material; and
  - (v) any developments or enhancements to the above, which are made or created as part of the provision of the Services,to the extent necessary and for the sole purpose of enjoying the benefit of the Services in accordance with this Agreement; however, neither the Customer nor any Services Recipient shall use such rights for any other purpose, including VME Remediation.
- (c) Notwithstanding the existence of the VME Licence, the right of use of the CHIEF VPaaS Services is as set out in this Agreement.
- (d) The Supplier shall not, without the Customer's prior written consent, introduce any Supplier Software, Supplier Material, Supplier Third Party Software or Supplier Third Party Material as part of, or in the provision of, the Services if

the Supplier has reasonable grounds to believe that the Supplier Software, Supplier Material, Supplier Third Party Software or Supplier Third Party Material proposed to be used will have a material adverse impact on the Customer's operations or on the Services, including in particular the Customer's security requirements set out in Schedule 12 (**Security**).

## 12.8 **Non-Infringement, Conformation to Specification and Confirmation of Ownership**

(a) The Supplier shall ensure that the Supplier Software, Supplier Material and Protected Supplier IPR (including any Supplier Software and Supplier Material embedded in any Work Product), and shall use Commercially Reasonable Efforts to ensure that all other products and their use by the Customer and/or any Services Recipient (excluding Services Recipients outside of the UK) in the intended manner, shall not infringe any Intellectual Property Rights of any third party, provided that this Clause 12.8(a) shall not apply to the extent that any infringement is caused by:

- (i) any Modifications other than those created by or on behalf of the Supplier;
- (ii) the use of Supplier Software, Supplier Materials or Protected Supplier IPR in combination with any other Intellectual Property Rights:
  - (A) not provided by or on behalf of the Supplier under this Agreement; or
  - (B) not approved (such approval not to be unreasonably withheld or delayed) by or on behalf of the Supplier, unless the Supplier is responsible for the integration of any Supplier Software, Supplier Materials or Protected Supplier IPR with any other Software or Materials; or
- (iii) the use of Software or Materials outside the Territory,

and provided further that this Clause 12.8(a) shall apply during the Term and thereafter in respect of the Customer, and during the Term but not thereafter in respect of Services Recipients.

(b) Subject to Clause 12.8(a) above, the Supplier confirms that:

- (iii) it owns or has the right to use or otherwise exploit, and shall, at all relevant times, own or have the right to use or otherwise exploit, the Equipment, Supplier Material, Supplier Software and all Intellectual Property Rights necessary to provide the Services; and
- (iv) it has, and shall at all relevant times have, the full right to grant the licences and provide any Assets, Work Product and/or Software to the Customer as set out in the Agreement,

provided that this Clause 12.8(b) shall not, and shall not be deemed to, apply to any Customer Software or Customer Material.

## 12.9 Intellectual Property Rights Relating to Business Applications and Modernisation Services

Without prejudice to the other sub-Clauses of this Clause 12 and the rights granted thereunder and subject always to the Customer's obligations in respect of the Supplier's Intellectual Property Rights and VME Remediation, the Parties agree the following:

- (a) The Customer shall retain all rights, title and interests in and to (including all Intellectual Property Rights therein):
  - (i) the VME Applications, and all developments or enhancements to them (whether by way of the Modernisation Services or otherwise); and
  - (ii) any new Business Applications developed by, or on behalf of, the Supplier for the Customer pursuant to the Modernisation Services,(together the "**Customer Applications**").
- (b) The Customer hereby grants to the Supplier a fully paid-up, irrevocable, non-exclusive, non-transferable licence during the Term to use, operate, copy, Modify and adapt the Customer Applications, only to the extent necessary for, and for the sole purpose of, providing the Modernisation Services, with the right to grant non-transferable sub-licences thereunder to the Subcontractors only for such purposes.
- (c) The Supplier shall retain all rights, title and interests in and to (including all Intellectual Property Rights therein):
  - (i) Supplier Software; and
  - (ii) Supplier Material,  
incorporated in the Customer Applications pursuant to the Modernisation Services (the "**Supplier Modernisation IPR**"); and
  - (iii) any other tools and/or processes (the Intellectual Property Rights in which are owned by the Supplier) which are used to provide the Modernisation Services.
- (d) The Supplier hereby grants to the Supplier a fully paid-up, irrevocable, perpetual, transferable, non-exclusive licence to use, operate, copy, Modify and adapt the Supplier Modernisation IPR, only to the extent necessary for, and for the sole purpose of, using or modifying the Customer Applications, with the right to grant non-transferable sub-licences thereunder only for such purposes.

## 12.10 Prohibition

- (a) The Customer shall not, save as specifically permitted by this Agreement (or as permitted by Law):
  - (i) decompile or reverse engineer any or all of the Supplier Software or Supplier Third Party Software;

- (ii) assign, transfer sell, lease, rent, charge or otherwise deal in or encumber the Supplier Software, Supplier Materials, Supplier Third Party Software or Supplier Third Party Materials, or use the Supplier Software, Supplier Materials, Supplier Third Party Software or Supplier Third Party Materials on behalf of any third party or make available the same to any third party; or
- (iii) remove or alter any copyright or other proprietary notice on any of the Supplier Software, Supplier Materials, Supplier Third Party Software or Supplier Third Party Materials.

## **13 EMPLOYEES**

### **13.1 Employees, TUPE, Staff Transfer and Secondment**

- (a) The Parties shall comply with their respective obligations as set out in Schedule 14 (**Employees and Subcontractors**).
- (b) During the Term, and if requested by the Customer, the Supplier agrees to second personnel to the Customer or to accept secondees from the Customer. The terms for such secondments shall be in the forms set out Annex 14-6 of Schedule 14 (**Employees and Subcontractors**).

## **14 SUBCONTRACTORS AND THIRD PARTIES**

### **14.1 Subcontractors**

- (a) The provisions regarding the Supplier's ability to appoint and change the Subcontractors are set out in Schedule 14 (**Employees and Subcontractors**). The Supplier agrees to comply fully with the requirements set out therein throughout the Term.
- (b) The Supplier shall remain liable at all times for all acts or omissions of the Subcontractors' arising out of or in connection with this Agreement and, in particular, any act or omission that would be a Default under this Agreement had it been done by the Supplier shall be deemed to be a Default by the Supplier under this Agreement notwithstanding the fact that it was done by the Subcontractor and not the Supplier.
- (c) Supplier shall maintain an up to date list of all Subcontractors that it uses to provide the Services and will make such list available to Customer on request. Such list shall include the full details of each Subcontractor and the associated part of the Services that the Supplier has engaged them to provide. The Supplier shall use reasonable endeavours to provide any other information that Customer requires in respect of such Subcontractors, subject to any confidentiality restrictions that the Supplier is subject to in respect of such Subcontractor.

## **15 PLANS AND DELAYS**

### **15.1 Compliance with Plans**

- (a) The various Project Plans (and other plans agreed by the Parties and which



have delivery dates to which the Parties agree this Clause 15 shall apply), including, for the avoidance of any doubt, any Project Plans contained in Final Supplier Proposals and any plan that may be agreed for the implementation of New Services, ("**Plans**"), may only be amended with the written agreement of the Customer (such agreement not to be unreasonably withheld or delayed). Such Plans provide an overview of the timetable for the provision of various elements of the Services under this Agreement and specify interdependencies between the Services and work performed by the Customer and other third parties. These Plans are intended as an aid to the Parties in planning the provision of the Services by the Supplier.

- (b) In managing the Agreement, the Parties shall take account of the Plans, and, in dealing with changes to any Plan, shall also assess and take account of the impact of the change on any other Plan.
- (c) If it should appear to the Customer or the Supplier, at any time, that any of the following apply:
  - (i) implementation of all or any one of or any part of the Services (including activities required to be completed in order to implement the Services or any part of the Services) does not or shall not conform with any Plan and may cause delay to or impede:
    - (A) the implementation of any of the Services or any part of the Services in accordance with the agreed timescales; or
    - (B) delivery or completion of the Services or any part of the Services; or
  - (ii) the Supplier is likely to fail to meet a Milestone in any Plan,

(each a "**Plan Delay**") then the Customer or the Supplier (as applicable) shall make the other Party aware as soon as it is reasonably practicable to do so and the Parties shall discuss such Plan Delay as part of the governance arrangements associated with the delivery of the applicable Services against such Plans and the Supplier shall comply with Clause 15.2 below.

## 15.2 Steps to Rectify a Plan Delay

- (a) Without prejudice to Clauses 15.3 and 16, the Supplier shall take the following steps to rectify any Plan Delay:
  - (i) submission to the Customer of a report giving details of:
    - (A) the circumstances from which the Plan Delay arises;
    - (B) the consequences, whether direct or indirect, which that Plan Delay may have on implementation, delivery or completion (as applicable) of the Services;
    - (C) any measures which the Supplier is adopting or proposes to

adopt to mitigate the consequences of that Plan Delay; and

- (D) whether the Supplier is claiming that a Relief Event or Force Majeure Event has occurred in relation to the Plan Delay pursuant to the relevant provisions of Clause 16 below; and
- (ii) submission to the Customer of a revised Plan and any proposed changes to any other Plan which shall provide for implementation of the Services to be pursued diligently in such manner as to achieve and to continue to achieve full implementation of each of the Services or the relevant part of the Services in accordance with this Agreement as soon as practicable, including taking all necessary steps consistent with Good Industry Practice to minimise the delay or impediment to the implementation or delivery (as applicable) of the Services.
- (b) The revised Plan and any changes to any other Plan shall not be implemented unless and until the Customer has returned the revised Plan endorsed "received no comments" or "received with comments" and the Supplier has amended the relevant Plan in accordance with any comments. The Customer shall review the revised Plan and any proposed changes to any other Plan in good faith and will not unreasonably withhold or delay its comment or approval.

### 15.3 Relief for Plan Delays

Where the Supplier is seeking relief from any obligation and/or Relief Event Compensation in respect of a Plan Delay that has arisen due to a Relief Event or Force Majeure Event, the relevant provisions of Clause 16 below shall have effect. Without prejudice to any payment due to the Supplier in respect of any Change, the Supplier shall have no claim against the Customer for any additional payment as a result of any Plan Delay which is not caused by a Relief Event or Force Majeure Event.

## 16 RELIEF, COMPENSATION AND FORCE MAJEURE EVENTS

### 16.1 Relief Events

- (a) To the extent that, as a result of the occurrence of a Relief Event, the Supplier:
  - (i) is unable to achieve, or is delayed in achieving, the provision of the Services or the relevant part of the Services (as applicable);
  - (ii) fails to meet any planned Milestone or to comply with any Plan, which shall include the occurrence of any Plan Delay; and/or
  - (iii) the Supplier is otherwise unable to comply with any or all of its obligations under this Agreement,

(each a "**Supplier Non-Performance**"), then the Supplier is entitled to relief from its obligations under this Agreement and, where the Supplier incurs any costs in relation to the Relief Event, to claim Relief Event Compensation, in accordance with this Clause 16.

- (b) To claim relief and/or Relief Event Compensation in respect of a Relief Event, the Supplier shall, as soon as reasonably practicable, and in any event within

thirty (30) Working Days (or such other period as the Parties may agree) after becoming aware that the Relief Event has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Customer a notice (a "**Relief Notice**") setting out details of:

- (i) the Supplier Non-Performance and the relief and/or Relief Event Compensation claimed by the Supplier;
  - (ii) any extension of the time claimed for the relevant Milestone or compliance with the relevant Plan;
  - (iii) the Relief Event and its effect, or likely effect, on the Supplier's ability to meet its obligations under the Agreement; and
  - (iv) any steps which the Customer can take to mitigate the consequences and impact of the Relief Event.
- (c) The Supplier shall use Commercially Reasonable Efforts to mitigate the costs incurred or expected to be incurred in connection with the Relief Event, and shall be entitled to claim Relief Event Compensation only where it can demonstrate that it is, has been, or will be unable to mitigate the relevant costs, having complied with its obligation under this Clause 16.
- (d) Following the receipt of a Relief Notice, the Customer shall, as soon as reasonably practicable, consider the nature of the Supplier Non-Performance and the alleged Relief Event and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Relief Event and its entitlement to relief and/or Relief Event Compensation, consulting with the Supplier where necessary. Any dispute as to any submitted Relief Notice shall be submitted for resolution in accordance with the Escalation Process. Pending the resolution of the dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- (e) If the Customer disputes any relief or Relief Event Compensation claimed by the Supplier, then, until resolution of such dispute, the Supplier shall not be obliged to incur any additional costs arising as a result of the relevant Relief Event, unless payment of such costs has been expressly agreed by the Parties in writing.
- (f) Upon the Customer being notified of a Relief Event and the relief and/or Relief Event Compensation claimed by the Supplier in accordance with Clause 16.1(b), but subject to subsequent adjustment following the resolution of any dispute referred to the Escalation Process in accordance with Clause 16.1(d):
  - (i) the Customer shall not be entitled to exercise its rights to Terminate this Agreement under Clause 29.1 below (or otherwise) in respect of the applicable Supplier Non-Performance, or to levy Liquidated Damages or Service Credits in respect of such Supplier Non-Performance;
  - (ii) if the Relief Event has caused, or will cause, a Plan Delay, the applicable Plan shall be revised to take account of the Plan Delay which has arisen or shall arise as a consequence of the Relief Event, and there shall be

an allowance of such time as shall be reasonable for such event taking into account the likely effect of the Plan Delay;

- (iii) the Customer shall give the Supplier such other reasonable relief from its obligations under the Agreement, as has been reasonably requested by the Supplier; and
  - (iv) the Customer shall pay to the Supplier any Relief Event Compensation that the Supplier has incurred or will incur.
- (g) Unless otherwise expressly stated otherwise in this Agreement, both Parties shall use their Commercially Reasonable Efforts to mitigate the effects of a Relief Event.
- (h) The Supplier shall make the Customer aware of any further information relating to the Relief Event that it receives or becomes aware of, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading, including any new information regarding details of actions that the Customer could take to mitigate or remedy the Relief Event.
- (i) This Clause 16.1 sets out an exclusive mechanism by which the Supplier shall be entitled to claim (and the Customer shall be required to pay) any additional costs incurred by the Supplier in providing the Services due to circumstances constituting a Relief Event. The Supplier may bring (as a claim for damages to which Clause 28 below applies) claims for other Losses suffered by it in such circumstances.

## 16.2 Early Warning

- (a) Without prejudice to Clause 16.1 above and the Supplier's obligations under this Agreement, the Supplier will communicate to the Customer in writing on becoming aware that it has not performed, will not be able to perform, or will be delayed in its performance of, its obligations in accordance with the terms of the Agreement ("**Early Warning**").
- (b) The Early Warning shall provide as much detail as is reasonably available to the Supplier so as to describe the affected elements of its obligations, the reason for the disruption and the steps the Supplier will undertake to prevent the disruption and/or mitigate the effects of the disruption.
- (c) The Supplier will provide regular status updates and will, in any event, immediately notify the Customer in the event of a material change in circumstances.
- (d) Any failure by the Supplier to comply with the requirements of this Clause 16.2 will not prevent the Supplier from claiming relief and/or Relief Event Compensation from the Customer in respect of such matter in accordance with Clause 16.1.
- (e) The Supplier shall not be entitled to claim relief and/or Relief Event

Compensation from the Customer under this Clause 16.2.

### 16.3 Force Majeure Events

#### (a) General

(i) Subject to Clauses 16.3(a)(ii)(A) below, and except to the extent that the Force Majeure Event is capable of being mitigated by the business continuity and disaster recovery requirements set out in Schedule 2 (**Services**), neither Party shall be in Default of this Agreement nor liable for any breach, or delay in performance, of its obligations under this Agreement if, and to the extent that:

- (A) the breach or delay is caused by a Force Majeure Event; and
- (B) the Party intending to claim relief has, as soon as reasonably practicable upon becoming aware of circumstances of Force Majeure which give rise to, or which are likely to give rise to any failure or delay on its part, given notice of its intention to claim relief to the other Party by the most expeditious method then available. Where that notice is not given in writing, the Party shall confirm the notice in writing within twenty-three (23) hours. Any notice shall contain any relevant information relating to the circumstances of the Force Majeure Event as is available, the actions being taken to remedy the failure or delay and the period which it is estimated that the failure or delay shall continue.

(ii) As soon as practicable after the occurrence of a Force Majeure Event:

- (A) the Party affected shall use Commercially Reasonable Efforts to perform (or recommence performing) its obligations as soon as and to the extent possible, including through the use of alternative sources, work-around plans and complying with their respective obligations to perform business continuity and disaster recovery including the obligations set out in Schedule 2 (**Services**), and relief under this Clause 16.3 shall cease to be available to a Party if it fails so to take such steps to remedy the failure; and
- (B) the Parties shall consult at regular intervals to agree any steps to be taken, and an appropriate timetable in which those steps should be taken, to enable continued provision of any affected Services (on a temporary or permanent basis).

#### (b) Allocation of Resource

- (i) If a Force Majeure Event causes the Supplier to allocate limited resources between the Supplier's customers, the Supplier shall not place the Customer lower in priority to any other similarly affected customer.
- (ii) The Supplier shall not re-deploy or reassign any person in a Key Supplier Position to another account in the event of a Force Majeure Event

without the Customer's prior consent.

(c) **Subcontractors**

The failure of any of the Subcontractors to perform any obligation owed to the Supplier (or a failure in relation to which the Supplier is required to have put in place security, recovery or other back-up arrangements pursuant to this Agreement) shall only constitute a Force Majeure Event with respect to the Supplier's performance of its obligations under this Agreement if, and to the extent that, the failure by the Subcontractor (or the failure of the relevant security, recovery or other back-up arrangements) is caused by the Force Majeure Event.

(d) **Step-in and Termination**

(i) The Parties acknowledge that:

(A) if a Force Majeure Event substantially prevents or delays the provision of any of the Services which are necessary for the performance of a Customer function reasonably identified by the Customer as being critical for more than three (3) consecutive Working Days, the Customer may at its option:

- 1) procure such Services from an alternate source; or
- 2) remove such Services from the scope of the Agreement,

and, in each case, the Service Charges shall be equitably reduced to reflect the alternative sourcing or removal of such Services; and

(B) if a Force Majeure Event substantially prevents or delays the provision of any of the Services which are necessary for the performance of a Customer function reasonably identified by the Customer as being critical for more than ten (10) consecutive Working Days, then, without limiting any other rights of the Customer, the Customer may terminate the Agreement without liability to the Supplier as of a date specified by the Customer in a written notice of termination to the Supplier.

(ii) If a Force Majeure Event (whether of the Customer, and/or the Supplier) subsists for more than thirty (30) consecutive Working Days and the Customer has not exercised its rights pursuant to Clause 16.3(d)0 above, the Supplier may give thirty (30) days' written notice to the Customer (an "**FM Notice**") that the Supplier intends to terminate the Agreement.

(iii) If the Supplier serves an FM Notice under Clause 16.3(d)(ii) above, then the Customer has the option either to accept such notice (in which case, the Agreement shall terminate with effect from the date of expiry of such FM Notice) or to respond in writing before the date of expiry of such FM Notice, stating that it requires the Agreement to continue. In the latter case:

- (A) the Customer shall pay to the Supplier the Service Charges from the date of expiry of the FM Notice as if the Services were being fully provided (subject to a reduction to take into account actual cost reductions achieved by the Supplier as a result of it exercising Commercially Reasonable Efforts to mitigate the effects of the Force Majeure Event); and
- (B) the Agreement shall not terminate (as a consequence of the Force Majeure Event in question) unless or until the Customer exercises its option set out in Clause 16.3(d)(i)(B) above.

(e) **Plan Delays due to Force Majeure**

Where a Plan Delay arises due to a Force Majeure Event, the relevant Plan shall be revised to take account of the Plan Delay which has arisen or shall arise as a consequence of the Force Majeure Event, and there shall be an allowance of such time as shall be reasonable for such event taking into account the likely effect of the Plan Delay. Customer shall not be entitled to levy Liquidated Damages or Service Credits in respect of a Plan Delay that arises due to Force Majeure Event.

(f) **Further Provisions**

- (i) Save as expressly set out in Clauses 16.3(a) to 16.3(d) above and in Clause 29.7 below, neither Party shall have any liability to the other in relation to any Loss or Claim which a Party suffers or incurs as a result of any Force Majeure Event and, accordingly, as between the Parties any such Loss or Claim shall be borne by each Party. In particular, during any period of Force Majeure, the Supplier shall only be entitled to receive the Service Charges in respect of the provision of any Services or parts of the Services that it continues to provide to the Customer during that period.
- (ii) The Parties shall, at all times following the occurrence of a Force Majeure Event, use Commercially Reasonable Efforts to prevent and mitigate the effect of any delay and, at all times during which the Force Majeure Event is subsisting, take all steps (in accordance with Good Industry Practice) to overcome or minimise the consequences of the Force Majeure Event.
- (iii) The Party affected by the Force Majeure Event shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Party affected to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- (iv) If the Supplier is the affected party, it shall not be entitled to claim relief under this Clause 16.3 to the extent that consequences of the relevant Force Majeure Event are capable of being mitigated by any of its Business Continuity and Disaster Recovery obligations set out in Schedule 2 (**Services**) but the Supplier has failed to do so.

## **17 CONTRACT MANAGEMENT**

### **17.1 Governance in General**

The Parties shall implement the various governance structures set out at Schedule 8 (**Governance**).

### **17.2 Reports**

The Supplier shall comply with the requirements of Schedule 9 (**Reporting**).

### **17.3 Annual Review**

- (a) Within two (2) months following the anniversary of the Effective Date, the Parties shall jointly review the overall operation of this Agreement to assess and consider:
  - (i) the extent to which the Services continue to meet the Customer's objectives and the Customer's general strategic requirements;
  - (ii) whether any improvements or changes may and should be made to the Services and/or the methods of service delivery;
  - (iii) the working condition of the Technical Infrastructure and the timetable for refreshment of that Technical Infrastructure; and/or
  - (iv) any other matters reasonably required by the Customer.
- (b) In conducting such review, the Supplier shall work with the Customer and shall provide advice and guidance to the Customer with regard to technology trends and technology planning relevant to the Services and to the Customer's business.
- (c) The Supplier shall prepare a report on the findings of the annual review undertaken pursuant to Clause 17.3(a) above within fifteen (15) Working Days of completion of such review and shall submit the report to the Customer.
- (d) Any improvements or changes proposed by either Party as a result of the review undertaken pursuant to this Clause 17.3 shall be dealt with as a Change in accordance with Schedule 7 (**Change Control Procedure**).

### **17.4 Technology Roadmap and Technical Infrastructure**

- (a) The Supplier will provide the VPaaS Services using the Technical Infrastructure described in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**).
- (b) Save as otherwise provided in this Agreement or as otherwise agreed by the Parties in relevant Projects, the Supplier shall provide the Modernisation Services and the Application Services such that the deliverable outputs or services shall be capable of using Open System Standards for future provision of services. This requirement shall not apply in respect of deliverable outputs or services that are required to align to and adopt aspects of the Supplier's VME and MVE environments.



- (c) The Supplier shall have responsibility for establishing the overall technology and systems architecture for the VPaaS Services and the Customer shall review this periodically with the Supplier. Any Changes resulting from such review shall be by agreement between the Parties and shall be implemented in accordance with Schedule 7 (**Change Control Procedure**).
- (d) The Customer shall have responsibility for establishing the overall technology and systems architecture, standards and strategic direction for the Application Services and Modernisation Services. The Supplier, in providing the Application Services and Modernisation Services, shall conform to and shall support such architecture, standards, and strategic direction (to the extent made known to the Supplier by the Customer and, where relevant, addressed and implemented in accordance with the specific terms of any Project and Schedule 7 (**Change Control Procedure**)).
- (e) The Supplier shall implement and maintain throughout the Term (save as otherwise agreed between the Parties in accordance with the mechanisms set out in this Agreement) the Technical Infrastructure necessary to provide the VPaaS Services in the form contained in Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**), as the same is amended from time to time in accordance with Schedule 7 (**Change Control Procedure**).
- (f) The Supplier shall prepare the Technology Roadmap for the VPaaS Services in accordance with the provisions of Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**).

## 17.5 Systems Change Management

- (a) The Supplier shall carry out changes to the Technical Infrastructure for the VPaaS Services in accordance with Schedule 7 (**Change Control Procedure**) except in the case of a Supplier Initiated Change which shall be approved in accordance with Clause 17.5(b) below.
- (b) For a Supplier Initiated Change raised by the Supplier which impacts the Technical Infrastructure for the Prime VPaaS Services and/or the CHIEF VPaaS Services, the Supplier shall present the Customer with sufficient detail to consider the approval of the Supplier Initiated Change, such approval not to be unreasonably withheld or delayed.

## 18 CHANGES TO SERVICES

### 18.1 Changes

Changes to the Services and the introduction of New Services shall be agreed and implemented pursuant to the Change Control Procedure.

## 19 AUDITS AND RECORD KEEPING

The Parties shall comply with their respective obligations as set out in Schedule 10 (**Audit Access**).

## **20 SECURITY**

The Parties shall comply with their respective obligations as set out in Schedule 12 (**Security**).

## **21 CUSTOMER DATA AND HMRC CUSTOMER DATA**

### **21.1 Integrity of Data**

The Supplier (to the extent that the Customer Data, and/or HMRC Customer Data is within its control and/or is Processed by it) and the Customer, shall each use their Commercially Reasonable Efforts (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the HMRC Customer Data, and Customer Data and to prevent any misuse, corruption, destruction or loss of the same.

### **21.2 Overseas Use of Customer Data, Software Development and Remote Access**

(a) In the course of provision of the Services:

- (i) the Supplier shall not (and shall ensure that the Subcontractors shall not) process or take any HMRC Customer Data outside the United Kingdom (or cause the same to happen);
- (ii) the Supplier shall not (and shall ensure that the Subcontractors shall not) allow HMRC Customer Data to be accessed from outside the United Kingdom except to the extent that the Customer or a Services Recipient themselves require such access;
- (iii) the Supplier shall not undertake or permit development outside the United Kingdom of:
  - (A) Supplier Software or Supplier Material;
  - (B) the Customer Software or the Customer Material; and/or
  - (C) Work Product,

provided that this sub-Clause 21.2(a)(iii) shall not apply to the development by a third party of Third Party Software, Third Party Materials or third party Equipment or to the development by or on behalf of the Supplier of Protected Supplier IPR or Supplier Software or Supplier Material, where the same is not primarily for the benefit of the Customer, the Services Recipients and/or other Government Departments; or

- (iv) the Supplier shall not (and shall ensure that the Subcontractors shall not) undertake work via remote access (except from within the United Kingdom) to:
  - (A) the Customer Assets; and/or

- (B) Equipment, Software or other components of the Technical Infrastructure which are used to store, process or otherwise manipulate HMRC Customer Data.
- (b) The Customer will keep under review the potential for delivering some of the services from locations outside the United Kingdom, subject always to meeting the Customer's security and other requirements, and shall make proposals on an annual basis unless and until the Customer agrees to adopt such proposals or the Customer determines that such proposals are no longer required. Such proposals will assume that the Customer will not allow any HMRC Customer Data to be processed off-shore unless and until the Customer advises the Supplier in writing of a change to this position. The Parties shall regularly meet to discuss such suggested proposals and, where they agree to proceed, shall take such actions as are necessary to implement each such proposal (including, where the implementation of an agreed proposal requires changes to this Agreement, through the Change Control Procedure).

### 21.3 Malicious Software and Disabling Code

- (a) The Supplier shall use Commercially Reasonable Efforts to ensure that no Malicious Software is coded or introduced into the Technical Infrastructure by the deployment of software provided by the Customer to protect against Malicious Software and disabling code. If the Supplier is responsible for the introduction of any Malicious Software into the Technical Infrastructure, the Supplier shall be responsible for removing and reducing the effects of any such Malicious Software.
- (b) Without prejudice to Clause 21.3(a) above, the Supplier shall regularly check for, and use Commercially Reasonable Efforts to delete, Malicious Software in the Technical Infrastructure using software provided by the Customer to find and protect against Malicious Software and disabling code.
- (c) The Supplier shall not, without the prior written agreement of the Customer, insert or allow the insertion into any Software of any code which would have the effect of disabling or otherwise shutting down all or any portion of the Services providing that it has in place as part of its standard VME and MVE software features including code that will not allow the same to operate without a licence or other legal right. With respect to any disabling code that may be part of such Software, the Supplier shall not invoke such disabling code at any time, including upon Termination of this Agreement, without the Customer's prior written consent or order of a competent Court.
- (d) Without prejudice to the Supplier's obligations set out in Clauses 21.3(a), 21.3(b) and 21.3(c) but subject to Clause 21.4 below, if any Malicious Software is found in the Technical Infrastructure or in any Supplier systems or Supplier Software (for which the Supplier is not responsible for introducing), the Supplier shall use Commercially Reasonable Efforts, at no additional charge, to reduce the effects of such Malicious Software. If the Customer requires the Supplier to take any reasonable additional measures (which go beyond Commercially Reasonable Efforts) to reduce the effects of such Malicious Software, the Supplier shall do so, provided that: (i) the Supplier is able to undertake such additional measures; and (ii) the Customer pays the Supplier for undertaking such additional measures, in accordance with the Rate Card or such other

charges as may be agreed by the Parties. To the extent that the Malicious Software causes a loss of operational efficiency or a loss of data that should have been defeated by the use of the software provided by the Customer to protect against Malicious Software and Disabling Code, in circumstances where the Supplier failed to deploy it, the Supplier shall restore such lost data to the latest backups (provided such back-ups are made available to the Supplier by the Customer or such back-ups are available as they are required to be made by the Supplier in accordance with Schedule 2 (**Services**)).

#### 21.4 **Loss or Corruption of Data**

If, through any Default of the Supplier, the Subcontractors or Supplier Personnel, any Customer Data or HMRC Customer Data is lost or sufficiently degraded so that such data is not useable, the Supplier shall:

- (a) re-constitute such data to the latest back-up of such data; and
- (b) without prejudice to other rights and remedies of the Customer under the Agreement or at Law, use Commercially Reasonable Efforts to assist the Customer to reconstitute such data to the actual time point of loss or degradation,

in each case provided such back-ups are made available to the Supplier by the Customer or such back-ups are available as they are required to be made by the Supplier in accordance with Schedule 2 (**Services**).

## 22 **DATA PROTECTION, FREEDOM OF INFORMATION AND TRANSPARENCY**

### 22.1 **Data Protection Compliance**

- (a) With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Customer is the Controller and that the Supplier is the Processor, and that the Processing may not be determined by the Supplier.
- (b) The Supplier shall:
  - (i) not Process or transfer the Personal Data and/or Sanitised Personal Data other than in accordance with the Customer's written instructions made pursuant to, or in connection with this Agreement, including but not limited to those which are incorporated into the applicable Annexures in Schedule 2 (**Services**), unless required by EU or member state law or Law to which the Supplier is subject, in which case the Supplier shall promptly inform the Customer of that legal requirement before Processing or transferring that Personal Data and/or Sanitised Personal Data, unless prohibited by Law;
  - (ii) acknowledge that the provision of the Services (in so far as it involves the Processing or transfer of Personal Data and/or Sanitised Personal Data) is restricted to the Processing of the types of Personal Data and categories of Data Subject set out in the applicable Annexures in Schedule 2 (**Services**) (the "**Processing Particulars**"), and shall, with the Customer's written consent, update the Processing Particulars from

time to time as necessary;

- (iii) subject to Clauses 22.1(p) – 22.1(q), 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, Personal Data Breaches and/or accidental loss, destruction or damage to the Personal Data and Sanitised Personal Data (including as relevant to the Services in accordance with Article 32 of the GDPR), while such Personal Data is in the possession or under the control of the Supplier or a Sub-processor, specifically the measures as are set out in Clause 21 (**Customer Data and HMRC Customer Data**) and Schedule 12 (**Security**) and having regard to the:

- (A) nature of the data to be protected;
- (B) harm that might result from a Personal Data Breach;
- (C) state of technological development; and
- (D) cost of implementing any measures,

and for the avoidance of doubt, this obligation shall only apply in respect of the Processing of Personal Data conforming with the Customer's written instructions made pursuant to, or in connection with this Agreement and/or as set out in the Processing Particulars;

- (iv) not disclose or transfer the Personal Data and/or Sanitised 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 and/or Sanitised Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Agreement, including Clause 22.1(e));
- (v) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and/or Sanitised Personal Data and ensure that the Supplier Personnel:
  - (A) are aware of and comply with the Supplier's duties under this Clause 22.1 and Clause 21 (**Customer Data and HMRC Customer Data**), Schedule 12 (**Security**) and Clause 23 (**Confidentiality**);
  - (B) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
  - (C) are informed of the confidential nature of the Personal Data and/or Sanitised Personal Data and do not publish, disclose or divulge any of the Personal Data and/or Sanitised Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement;
  - (D) have undergone adequate training in the use, care, protection

and handling of Personal Data; and

- (E) retain evidence of the steps taken in respect of Clauses 22.1(b)(v)(A) to 22.1(b)(v)(D) above for the Customer's inspection;
- (vi) notify the Customer promptly and without undue delay upon becoming aware of an actual Personal Data Breach and/or a reasonably suspected Personal Data Breach and/or circumstances that may give rise to a Personal Data Breach, promptly providing the Customer, in the case of an actual Personal Data Breach, with the following information, as a minimum:
  - (A) describe the nature of the Personal Data Breach, the categories and approximate numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
  - (B) communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;
  - (C) describe the likely consequences of the Personal Data Breach; and
  - (D) describe the measures taken or proposed to be taken to address the Personal Data Breach;
- (vii) cooperate with the Customer and take such reasonable steps as are directed by the Customer to assist the Customer to mitigate or remedy the consequences of an actual Personal Data Breach and/or a reasonably suspected Personal Data Breach, taking into account the nature of processing and the information available to the Supplier, including but not limited to:
  - (A) documenting any such Personal Data Breaches and reporting them to any supervisory authority;
  - (B) taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and
  - (C) conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly,save where such steps do not arise as a result of a breach of this Agreement by the Supplier whereupon it is agreed that, although the Supplier shall take such steps as soon as reasonably possible, it shall have the ability to impact and make a reasonable charge for compliance with this obligation, in accordance with Clause 22.1(s), and all of the above pursuant to Articles 35 and 36 of the GDPR;
- (viii) notify the Customer promptly and without undue delay if it receives:

- (A) from a Data Subject (or third party on their behalf):
  - 1) a Data Subject Access Request (or purported Data Subject Access Request);
  - 2) a request to rectify, any inaccurate Personal Data;
  - 3) a request to have any Personal Data erased;
  - 4) a request to restrict the Processing of any Personal Data;
  - 5) a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any third party;
  - 6) an objection to any Processing of Personal Data; or
  - 7) any other request, complaint or communication relating to the Customer's obligations under the Relevant Data Protection Laws;
- (B) any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data; or
- (C) 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,

all of the above by reference to the obligations set out in Articles 33 and 34 of the GDPR;

- (ix) not, without the Customer's prior written consent, and subject also to Clause 32.2, make or permit any announcement in respect of a Personal Data Breach or respond to any request, communication or complaint of the kind listed at Clause 22.1(b)(viii)(A)-22.1(b)(viii)(C); unless such non response would cause the Supplier to be in breach of the Law;
- (x) taking into account the nature of the Processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible (by reference to the Services as at the Effective Date, such that the Supplier would not be required, on a non-chargeable basis, to develop and implement a method of accessing the applicable Personal Data), for the fulfilment of the Customer's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the GDPR, and where the Parties agree that the Customer already has direct access to the information (including through a Supplier-provided Business Application) required to respond to such Data Subject rights without the need for the Supplier to assist but the Customer nevertheless opts for the Supplier to assist, the Supplier shall be entitled to impact and make a reasonable charge for compliance with this obligation, in accordance with Clause 22.1(s);
- (xi) comply with its obligations under Article 31 of the GDPR to co-operate

with the Information Commissioners Office on request in relation to the performance of its obligations under this Agreement; and

(xii) without prejudice to Clause 22.1(b)(i), not without the prior written consent of the Customer:

(A) convert any Personal Data for "big data" analysis or purposes; or

(B) match or compare any Personal Data with or against any other Personal Data (whether the Supplier's or any third party's);

and in each case the Supplier shall only take the steps set out in (A) to (B) above strictly to the degree required to fulfil its obligations under this Agreement.

(c) The Supplier's obligation to notify under Clause 22.1(b)(vi) and 22.1(b)(viii) shall include the provision of further information to the Customer in phases, as details become available.

(d) Insofar as the Supplier Processes Sanitised Personal Data, the Supplier shall not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived.

(e) The Supplier shall be entitled to appoint any Subcontractor or other Third Party to Process any Personal Data and/or Sanitised Personal Data ("**Sub-processor**") (and this Clause 22.1(e) shall be deemed the Customer's general written authorisation to the same). The Supplier shall remain fully liable to the Customer and any relevant Services Recipient for any failure by a Sub-processor to fulfil its obligations in relation to the Processing of any Personal Data and/or Sanitised Personal Data, and such failure by a Sub-processor shall be deemed a Supplier Default for the purposes of Clause 14.1(b). Such consent is conditional upon:

(i) the use of any Sub-processor being otherwise in accordance with Clause 14 and Clause 22.1(g); and

(ii) the Supplier providing the Customer with reasonable prior notice of any addition or replacement of such Sub-processors, thereby providing the Customer the opportunity to object to such changes in accordance with Section 3 of Schedule 14 (**Employees and Subcontractors**). The Parties acknowledge that an objection by the Customer under this sub-Clause shall be deemed a valid objection under Section 3 of Schedule 14 (**Employees and Subcontractors**).

(f) In addition to the general written authorisation granted by the Customer under Clause 22.1(e) above, the Customer consents to the use by the Supplier as at the Effective Date of the Sub-processors listed in the Processing Particulars which shall be updated as required in accordance with Clause 22.1(e).

(g) The Supplier shall procure that all Sub-processors:



- (i) appointed after the Effective Date and prior to commencing the Processing of any Personal Data and/or Sanitised Personal Data enter into a written contract in relation to the Processing with the Supplier which shall include:
    - (A) substantially the same data protection obligations on the Sub-processor as are imposed on the Supplier by this Agreement and which shall set out the Sub-processor's agreed Processing activities in the same or substantially similar form as the applicable Processing Particulars; and
    - (B) substantially the same written instructions (as relevant to the Processing which is to be undertaken by the Sub-processor) as have been provided by the Customer pursuant to, or in connection with the relevant part of this Agreement; and
  - (ii) act in accordance with Clauses 14 (**Subcontractors and Third Parties**) and 22.1 (**Protection of Personal Data**); and
- (h) in respect of all Sub-processors already acting as a Sub-processor in relation to the Services prior to the Effective Date under the Prime Agreement or the CHIEF Agreement (as applicable), the Supplier will flow-down:
  - (i) substantially the same data protection obligations on the Sub-processor as are imposed on the Supplier by this Agreement which shall set out the Sub-processor's agreed Processing activities in the same or substantially similar form as provided in the applicable Processing Particulars; and
  - (ii) substantially the same written instructions (as relevant to the Processing which is being undertaken by the Sub-processor) as have been provided by the Customer pursuant to, or in connection with the relevant part of this Agreement.
- (i) In respect of the flow-down required by Clauses 22.1(g) and 22.1(h) above, any material deviation shall be highlighted by the Supplier to the Customer and the Parties shall discuss and agree whether or not the Sub-processor's position is acceptable for the Customer's continued consumption of the Services.
- (j) The Supplier shall not Process or otherwise transfer any Personal Data and/or Sanitised Personal Data in or to any Off-shore location (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Customer of that legal requirement before Processing that Personal Data and/or Sanitised Personal Data, unless that law prohibits such information being provided on important grounds of public interest).
- (k) The Supplier shall perform its obligations so as to assist the Customer to comply with its obligations under the Relevant Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Relevant Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations. In

connection with this obligation, the Supplier shall:

- (i) immediately inform the Customer if, in its opinion, any instruction given by the Customer infringes, or might reasonably be considered to infringe, the Relevant Data Protection Laws;
  - (ii) provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing, such assistance including, at the discretion of the Customer:
    - (A) a systematic description of the envisaged processing operations and the purpose of the processing;
    - (B) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
    - (C) an assessment of the risks to the rights and freedoms of Data Subjects; and
    - (D) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
  - (iii) subject to Clause 22.1(b)(iii), support the Customer in its compliance with Article 32 of the GDPR; and
  - (iv) at the written direction of the Customer, promptly and securely delete or return Personal Data, unless the Supplier is required by Law to retain the Personal Data.
- (l) The Supplier shall not cause the Customer to breach any obligation under the Relevant Data Protection Laws and shall itself comply fully with its obligations under the Relevant Data Protection Laws including by:
- (i) adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR;
  - (ii) designating a Data Protection Officer if required by the Relevant Data Protection Laws;
  - (iii) maintaining complete and accurate records of its Processing of Personal Data containing the information set out in Article 30(2) of the GDPR, this requirement applying only where the Supplier employs 250 or more staff, unless:
    - (A) the Processing is not occasional;
    - (B) the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
    - (C) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and

- (iv) reporting any suspected non-compliance or actual non-compliance with this Clause to the Customer promptly and without undue delay upon becoming aware of such non-compliance.
- (m) The Supplier shall allow for audits of its Personal Data Processing activity by the Customer or the Customer's designated auditor upon reasonable advance notice, and make available to the Customer or the Customer's designated auditor all information reasonably necessary to demonstrate compliance with this Clause. Audit activities and whether or not such activities are chargeable shall be determined in accordance with Schedule 10 (**Audit Access**), and the Parties agree that the reference to 'material breach' in Section 4.8(b) of Schedule 10 (**Audit Access**) is deemed to include a Personal Data Breach.
- (n) The Customer shall not cause the Supplier to breach any obligation under the Relevant Data Protection Laws and shall itself comply fully with its obligations under the Relevant Data Protection Laws. As part of this undertaking, the Customer undertakes that it shall, at all times, have all necessary legal bases, notices and/or consents (as applicable) in place as is required by the Relevant Data Protection Laws in order for the Customer to lawfully transfer Personal Data to the Supplier for Processing in accordance with this Agreement (including transfers of EEA Personal Data to the Supplier in the UK, following the date on which the UK ceases to be a member of the European Union). The Customer shall be liable for all Losses, fines and/or expenses incurred by the Supplier as a result of a breach of this Clause 22.1(n) by the Customer. The Customer's liability pursuant to this Clause 22.1(n) shall be subject to the Customer's general, aggregate cap on liability as set out in Clause **Error! Reference source not found.**, but not subject to the Customer's annual cap on liability as set out in Clause **Error! Reference source not found.**
- (o) The Customer shall nominate a "**Customer Data Protection Representative**" and the Supplier shall nominate a "**Supplier Data Protection Representative**" (together the "**Data Protection Representatives**"). The Data Protection Representatives shall:
  - (i) meet at least once annually to:
    - (A) review the data protection provisions of this Agreement taking into consideration any changes to the Relevant Data Protection Laws;
    - (B) review the description of Processing set out in the Processing Particulars and ensure that any updates required under Clause 22.1(b)(ii) have been implemented; and
    - (C) review each Party's compliance with its data protection obligations under this Agreement; and
  - (ii) consider the impact which any change made in accordance with Schedule 7 (**Change Control Procedure**) may have on any relevant written instructions and/or the description of Processing set out in the Processing Particulars, and suggest such amendments as may be required as a result of that impact, to be agreed between the Parties.

- (p) The Parties acknowledge that there may be occasion when Personal Data is being, or is requested to be, Processed by the Supplier in the absence of written instructions made pursuant to, or in connection with the Agreement. In the event that:
- (i) the Customer wishes to introduce new types of Personal Data and/or new categories of Data Subject in the provision of the Services, then this shall be handled in accordance with Schedule 7 (**Change Control Procedure**);
  - (ii) the Processing of a type of Personal Data and/or category of Data Subject not previously identified under the Processing Particulars and/or contemplated by any written instructions made pursuant to or in connection with the Agreement, is discovered as being involved in the provision of the Services, then this shall be handled in accordance with Schedule 7 (**Change Control Procedure**) but, and in addition to Schedule 7 (**Change Control Procedure**):
    - (A) the Parties shall within two (2) Working Days of such Personal Data/Data Subject discovery, agree whether or not the existing technical and organisational measures are adequate for the Supplier to comply with its obligations under Clause 22.1(b)(iii). If this is the case, then the Processing Particulars and/or any relevant Customer written instructions shall be updated to include the newly identified type of Personal Data and/or category of Data Subject; or
    - (B) in the event that:
      - 1) this impact assessment identifies a need for a new technical or organisational measure to comply with Clause 22.1(b)(iii) "**GDPR Change**", which may require additional funding and/or time to implement such GDPR Change; and/or
      - 2) the Parties have not agreed within two (2) Working Days of such Personal Data/Data Subject discovery in Clause 22.1(p)(ii)(A), whether or not the existing technical or organisational measures are adequate for the Supplier to comply with Clause 22.1(b)(iii),

then, the Supplier may suspend the provision of the relevant Services or Processing, or such relevant affected elements of the Services or Processing ("**GDPR Suspension**") with such suspension lasting until the earlier of:

- (aa) the implementation of the GDPR Change in accordance with Schedule 7 (**Change Control Procedure**) and the process set out at Clause 22.1(p)(ii)(A) being completed (albeit outside of the two (2) Working Days specified in that Clause 22.1(p)(ii)(A)); or

- (bb) the Parties mutually agreeing that a GDPR change is not required.
- (q) The Customer, acting as the Controller, has satisfied itself that the technical and organisational measures currently in place for the Services, in so far as they comply with Schedule 12 (**Security**) and the other express obligations and requirements under the Agreement, are appropriate technical and organisational measures to protect Personal Data disclosed by the Customer ("**Appropriate Measures**"). In the circumstances that either Party becomes aware that the technical and organisational measures do not (or it is reasonably suspected or alleged that they do not) amount to Appropriate Measures (a "**Security Discrepancy**"), then:
  - (i) the Parties shall negotiate in good faith to amend the Services (including but not limited to the relevant measures set out Schedule 12 (**Security**)) via the Change Control Procedure to address the Security Discrepancy; and
  - (ii) until such time as the Security Discrepancy is resolved, and subject to Clause 22.1(r), the Supplier will not be considered to be in breach of Clause 22.1(b)(iii) as a result of, or otherwise liable for, the Security Discrepancy and either:
    - (A) the Parties, acting reasonably, may agree that the Supplier should suspend the provision of the relevant Services or Processing, or such relevant affected elements of the Services or Processing ("**Security Discrepancy Suspension**") with such suspension lasting until the earlier of:
      - 1) a resolution being reached as described in Clause 22.1(q)(i);
      - 2) the Parties mutually agreeing that the relevant technical and organisational measures amount to Appropriate Measures; or
      - 3) a notice being given by the Customer under Clause 22.1(q)(ii)(B); or
    - (B) the Customer may, at its own discretion, issue a written notice to the Supplier stating that the Supplier should not implement a Security Discrepancy Suspension and that the Customer shall be liable for all Losses, fines and/or expenses incurred by the Supplier, including any further costs required in order to meet any additional requirements imposed by a relevant regulatory body on the Supplier as a result of a breach related to the continued processing of the relevant Personal Data utilising the technical and organisational measures which have been identified as a Security Discrepancy under this Clause 22.1(q).
- (r) In addition to any rights and remedies available to the Supplier under Clause 16.1 (**Relief Events**), the Supplier shall be relieved from liability due to any failure to perform any of its obligations under this Clause 22.1 (including any

associated failure to perform any Services) or under the Relevant Data Protection Laws to the extent that such failure:

- (i) **Redacted**
- (ii) arises from a claim or complaint made by any third party (including without limitation any Data Subject or supervisory authority) with regards to Supplier's Processing of Personal Data under this Agreement to the extent that such actions result from any of the following:
  - (A) in respect of any new systems implemented after the Effective Date, a Customer approved System Design to the extent the System Design articulated a security or GDPR related risk that the Customer approved;
  - (B) Customer-approved RMADS;
  - (C) Customer accepted risk identified in the Customer's Security Risk Assessment Process (replacement for RMADS);
  - (D) **Redacted**
  - (E) a Relief Event,

and/or
- (iii) (save to the extent arising from a breach by the Supplier of its obligations under this Clause 22.1 that is not subject to relief under Clause 22.1(r)**Error! Reference source not found.**or 22.1(r)(i)) above) arising from any order by a regulatory authority (in respect of the Relevant Data Protection Laws and whether relating to the Customer or the Supplier) that the Services or the express obligations of the Supplier under this Agreement are in breach of the Relevant Data Protection Laws,

and the Customer shall be liable for all Losses, fines and/or expenses incurred by the Supplier as a result of any of the circumstances set out in this Clause 22.1(r). The Customer's liability pursuant to this Clause 22.1(r) shall be subject to the Customer's general, aggregate cap on liability as set out in Clause **Error! Reference source not found.**, but not subject to the Customer's annual cap on liability as set out in Clause **Error! Reference source not found.**

- (s) Where the Supplier's compliance with its obligations under this Clause 22.1 is stated to be chargeable, the Supplier shall be permitted to charge the Customer for its reasonable, demonstrable (including the provision of reasonable supporting evidence) and properly incurred costs incurred in undertaking such support or activities, provided that such support or activities is not required due to a Default by the Supplier and do not form part of any of Supplier's other obligations under this Agreement. Further, additional Charges under this Clause shall only be levied in respect of effort and costs by Supplier which are genuinely incremental to the effort and costs of the Supplier in delivering the Services and otherwise generally complying with this Agreement. Alternatively

to charging under this Clause, the Parties may agree that the Supplier's compliance with its relevant obligations under this Clause 22.1 may be met by utilising the Supplier's existing resources, without incremental cost but potentially in replacement of other obligations as agreed with the Customer.

## 22.2 Transparency and Freedom of Information

- (a) Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Acts ("**FOIA**"), the Environmental Information Regulations ("**EIR**") and the Re-use of Public Sector Information Regulations 2015.
- (b) The Parties acknowledge that the content of this Agreement, including any Changes to this Agreement agreed from time to time, except for:
  - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR, which shall be determined by the Customer; and
  - (ii) Commercially Sensitive Information,(the "**Transparency Information**") is not FOIA Disclosure Related Confidential Information and may be disclosed by the Customer pursuant to this Clause 22.2.
- (c) Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- (d) The Supplier shall assist and cooperate with the Customer to enable the Customer to publish the Transparency Information.
- (e) If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- (f) The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

- (g) The Supplier agrees that any information it holds that is reasonably relevant to, or that arises from the provision of, the Services shall be provided to the Customer on request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, FOIA Disclosure Related Confidential Information and Confidential Information (subject to Clause 23.1(g)(ix)) publish such information. The Supplier shall provide to the Customer within five (5) Working Days (or such other period as the Parties may agree) any such information requested by the Customer.
- (h) The Supplier shall:
  - (i) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
  - (ii) transfer to the Customer all Requests for Information ("**RFIs**") relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (iii) provide the Customer with a copy of all information held on behalf of the Customer which is requested in an RFI and which is in its possession or control in the form that the Customer requires (unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA), within five (5) Working Days (or such other period as the Parties may agree) of the Customer's request for such information; and
  - (iv) not respond directly to an RFI addressed to the Customer unless authorised in writing to do so by the Customer.
- (i) The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Supplier will submit to the Customer a list of information it believes should be redacted from the version of the Agreement to be published on Contracts Finder for the Customer to consider. The Parties will agree the redacted version of the Agreement before the Agreement is entered into. The redacted version of the Agreement will be published on Contracts Finder. In the event that the Customer discloses information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier, the Supplier may make public statements in respect of such information but must inform the Customer before doing so.
- (j) Without prejudice to Clause 22.2(a), the Customer shall:
  - (i) take reasonable steps to notify the Supplier of RFIs (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 (notwithstanding any other provision in this Agreement); and



- (ii) consider in good faith whether or not to apply any relevant exemption available under the FOIA or the EIR,

provided that the Customer 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 EIRs.

- (k) For the purposes of this Clause 22.2, **"FOIA Disclosure Related Confidential Information"** means:

- (i) information, including all Personal Data, which (however it is conveyed) is provided by the disclosing Party pursuant to or in anticipation of this Agreement that relates to:
  - (A) the disclosing Party and/or its Affiliates; or
  - (B) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the disclosing Party and/or its Affiliates;
- (ii) other information provided by the disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the receiving Party's attention or into the receiving Party's possession in connection with this Agreement;
- (iii) discussions, negotiations, and correspondence between the disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the receiving Party's or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (iv) information derived from any of the above, but not including any information which:
  - (A) was in the possession of the receiving Party without obligation of confidentiality prior to its disclosure by the disclosing Party;
  - (B) the receiving Party obtained on a non-confidential basis from a third party who is not, to the receiving Party's knowledge or belief, bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
  - (C) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
  - (D) was independently developed without access to the information; or
  - (E) relates to the Supplier's performance under this Agreement.

## 23 **CONFIDENTIALITY**

### 23.1 **General Obligations of Confidentiality**

- (a) Without prejudice to the application of the statutes referred to in Clause 24 (Official Secrets Act), the Supplier acknowledges that any Confidential Information obtained by the Supplier from, or relating to, the Customer or its servants or agents, in the course of tendering for this Agreement, is the property of the Customer.
- (b) The Customer for itself and the Services Recipients acknowledges that any Confidential Information obtained by the Customer from, or relating to, the Supplier, the Services, VME and/or MVE or other Intellectual Property Rights of the Supplier is the property of the Supplier and may only be used for legitimate reasons in connection with the performance or receipt of the Services.
- (c) Each Party agrees, for itself and its respective directors, officers, employees, servants, agents and subcontractors, to keep confidential and not to disclose to any person (save as hereinafter provided) any of the terms of this Agreement or any Confidential Information provided to it, or arising or acquired by it, pursuant to the terms or performance of this Agreement (including any such Confidential Information supplied or obtained in the course of proceedings under the Escalation Process).
- (d) The Supplier shall obtain from all Subcontractors, prior to their commencing work on the Services or receiving any Confidential Information, a signed non-disclosure undertaking in substantially the form attached at Annex 14-2 to Schedule 14 (**Employees and Subcontractors**).
- (e) The Supplier shall obtain from all Supplier Personnel a signed non-disclosure undertaking in substantially the form attached at Annex 14-3 to Schedule 14 (**Employees and Subcontractors**).
- (f) Subject to Clause 23.1(g), the Supplier shall inform the Customer of all third parties (including Subcontractors and all Supplier Personnel) to whom it intends to disclose Confidential Information and the Customer shall have the right to veto the disclosure of such Confidential Information to any such persons and, in the event of such a veto, the Supplier shall not disclose any Confidential Information to any such vetoed person.
- (g) Notwithstanding the other provisions of this Clause 23.1, and subject to Clause 22.1 above, a Party shall be entitled to disclose the whole or any part of the Confidential Information:
  - (i) to its directors, officers, employees, servants, subcontractors, agents or professional advisers and, in the case of the Customer to any Services Recipients to the extent necessary to enable them to perform (or to cause to be performed) or to enforce any of their rights or obligations under this Agreement;
  - (ii) when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, association or agency of competent jurisdiction or any governmental agency;

- (iii) in the case of the Supplier, to any bank or financial institution from whom it is seeking or obtaining finance upon obtaining from such entity to whom the disclosure is to be made, a written undertaking of strict confidentiality in relation to the Confidential Information in question, in the same terms as are contained herein;
- (iv) to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
- (v) to the extent that the Confidential Information is already lawfully in the possession of the recipient or lawfully known to it prior to such disclosure;
- (vi) to the extent that the Party has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to the other Party;
- (vii) in the case of the Customer, to any other department, office or agency of the Government (including the National Audit Office) or other entity where required for its proper departmental, parliamentary, governmental, statutory or judicial purposes, provided that the Customer shall prior to disclosure notify the intended recipient of the confidential nature of the Confidential Information in question and the Customer (unless otherwise agreed between the Parties, acting reasonably with due regard to the applicable circumstances relating to the proposed disclosure and the identity of the intended recipient) uses Commercially Reasonable Efforts to ensure that such information is held in confidence by such departments, offices and agencies, and their servants or agents, including, where appropriate, requiring servants or agents to enter into an appropriate non-disclosure undertaking;
- (viii) in the case of the Customer, to any consultant, contractor or other person engaged by the Customer in connection with this Agreement, provided that the Customer obtains from the consultant, contractor or other person a signed non-disclosure undertaking in substantially the same form as attached at Annex 14-2 or 14-3 (as applicable) to Schedule 14 (**Employees and Subcontractors**) and provided further that in the event that the Customer wishes to disclose to any such consultant, contractor or other person Confidential Information of the Supplier obtained by, or provided to, the Customer as a result of the exercise by the Customer of its rights of audit set out in Schedule 10 (**Audit Access**), the Customer shall use Commercially Reasonable Efforts to give the Supplier prompt advance written notice of this proposed disclosure and shall consult and use Commercially Reasonable Efforts to give the Supplier reasonable opportunity to comment on the nature and extent of the proposed disclosure, and shall (acting reasonably with due regard to the applicable circumstances relating to the proposed disclosure and the identity of the intended recipient) take account of any reasonable comment made by the Supplier;
- (ix) in the case of the Customer, subject to Clause 22.2, to the extent it is necessary and appropriate in the course of the Customer carrying out

its public functions; and

- (x) as otherwise expressly permitted pursuant to this Agreement.
- (h) In relation to any disclosure of the Customer's Confidential Information by the Supplier in the circumstances described in sub-Clauses 23.1(g)(ii) and 23.1(g)(iii) above, the Supplier shall give the Customer prompt advance written notice of this disclosure and shall consult and give the Customer reasonable opportunity to comment on the nature and extent of disclosure, and shall take account of any reasonable comment made by Supplier.
- (i) In relation to any disclosure of the Supplier's Confidential Information by the Customer in the circumstances described in sub-clauses 23.1(g)(ii), 23.1(g)(vii) or 23.1(g)(viii) above, the Customer shall give the Supplier prompt advance written notice of this disclosure and shall consult and give the Supplier reasonable opportunity to comment on the nature and extent of disclosure, and shall (acting reasonably with due regard to the applicable circumstances relating to the proposed disclosure and the identity of the intended recipient) take account of any reasonable comment made by the Supplier. In addition, where the Customer discloses the Supplier's Confidential Information in any of the circumstances described in Clause 23.1(g) above and the intended recipient is a private sector organisation, the Customer shall first obtain an appropriate confidentiality undertaking.
- (j) In respect of any disclosure in the circumstances described in Clause 23.1(g)(ii) above, the obligation to provide written notice pursuant to Clauses 23.1(h) or 23.1(i) above shall apply only to the extent that the disclosing party is legally entitled to give such notice.

## 23.2 Steps to Protect Confidentiality

- (a) The Supplier shall, with respect to any Confidential Information it receives from the Customer or in connection with the Services:
  - (i) use, and shall use its Commercially Reasonable Efforts to ensure that all Subcontractors and Supplier Personnel use, the Confidential Information solely for the purposes of this Agreement;
  - (ii) take, and shall use its Commercially Reasonable Efforts to ensure that all Subcontractors and Supplier Personnel take, all necessary precautions to ensure that all Confidential Information is held in confidence and treated as proprietary to the Customer;
  - (iii) comply, and shall use its Commercially Reasonable Efforts to ensure that all Subcontractors and Supplier Personnel comply, with all instructions and/or guidelines produced by the Customer from time to time for the handling and storage of Confidential Information generally or for specific items as required by Schedule 12 (**Security**);
  - (iv) inform all Subcontractors and Supplier Personnel that breach of any of the confidentiality obligations set out in this Clause 23 may result in disciplinary action, and then institute and enforce (or procure that the Subcontractor institutes and enforces) such disciplinary proceedings as

the Supplier (or the Subcontractor) considers (acting reasonably) to be appropriate in the circumstances; and

- (v) place an obligation in its agreements with Subcontractors that all Confidential Information be held in confidence and treated as proprietary to the Customer.
- (b) The Customer shall, with respect to any Confidential Information it receives from the Supplier or in connection with the Services:
  - (i) place an obligation in its agreements with any third parties to whom Supplier's Confidential Information is disclosed in accordance with this Agreement, that all such Confidential Information be held in confidence and treated as proprietary to the Supplier; and
  - (ii) use Commercially Reasonable Efforts to ensure that all Customer personnel and any third parties to whom Supplier's Confidential Information is disclosed in accordance with this Agreement take, all necessary precautions to ensure that all such Confidential Information is held in confidence and treated as proprietary to the Supplier.

### 23.3 **Commissioners for Revenue and Customs Act 2005 (and related Legislation) and Disclosure of HMRC Customer Data**

- (a) The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, HMRC Customer Data or Customer Data (for the purposes of this Clause "**Relevant Data**") comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of the Relevant Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- (b) The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Relevant Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- (c) The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Relevant Data comply with the obligations set out in the Official Secrets Acts 1911 to 1989 and the obligations set out in Section 182 of the Finance Act 1989.
- (d) The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon such persons set out in Clause 23.3(a) above. The Supplier shall monitor the compliance by such persons with such obligations.
- (e) The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Relevant Data sign a declaration in the form attached at

Annex 14-4 to Schedule 14 (**Employees and Subcontractors**) acknowledging that they understand and have been informed about the application and effect of Section 18 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Customer upon demand.

- (f) The Supplier shall forthwith report to the Customer in writing:
  - (i) all breaches of the Supplier's obligations under this Clause 23.3, whether by the Supplier or any Supplier Personnel or by any third party who obtains access to the Relevant Data; and
  - (ii) so far as it is legally entitled to do so, all disciplinary actions taken by the Supplier in respect of such breaches by the Supplier Personnel and all other actions (including, for example, contractual penalties imposed) taken in respect of such breaches by Suppliers.
- (g) Notwithstanding the generality of Clause 23.1(g) above, Relevant Data shall not be released from any of the confidentiality obligations of this Clause 23.3 except with the written consent of the Customer and in accordance with this Clause 23.3, or except where such disclosure is made by the Customer and is permitted by Section 182 of the Finance Act 1989, Section 18 of the Commissioners for the Revenue and Customs Act 2005, Section 6 of the Taxes Management Act 1970 or Section 123 of the Social Security Administration Act 1992.
- (h) If the Supplier commits a material breach of this Clause 23.3:
  - (i) in the case of a material breach of Clauses 23.3(a), 23.3(b) or 23.3(c), such material breach shall be deemed to be a Material Default for the purposes of Clause 29.1; and
  - (ii) in the case of any other material breach, such material breach may form the basis for a Material Default in appropriate circumstances.

#### **23.4 Confidentiality in relation to Disputes, Audits and other Proceedings**

- (a) A Party shall not publish, alone or in conjunction with any other person, any articles or other material relating to any dispute arising under this Agreement nor impart any information regarding any such dispute (except to its professional advisers under obligations of confidentiality), except and to the extent that such publication arises out of any statutory, parliamentary or regulatory obligation applicable to that Party.
- (b) The Parties acknowledge that the National Audit Office has the right to publish details of the Agreement (including commercially sensitive information) in its relevant reports to Parliament.

#### **23.5 Remedies for Breach of Confidentiality**

Without prejudice to any other rights and remedies whether under this Agreement or at Law, each Party agrees that damages would not be an adequate remedy for any breach of this Clause 23 and that the other Party shall be entitled to apply for the

remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Clause 23.

### 23.6 **Improper Use of Confidential Information or HMRC Customer Data**

The Supplier shall not, either itself or by any other consultant or third party, use the Customer's Confidential Information or HMRC Customer Data for:

- (a) solicitation of further business from the Customer or from any other part of the Crown or any Contracting Authority; or
- (b) any commercial or pecuniary advantage.

### 23.7 **Improper Use of Supplier Confidential Information**

The Customer shall not, either itself or by any other consultant or third party, use the Supplier's Confidential Information for:

- (a) any purpose other than the receipt of the Services;
- (b) the provision of other services for the Customer or for any other part of the Crown or any Contracting Authority; or
- (c) any other commercial or pecuniary advantage.

### 23.8 **Period of Confidentiality**

The obligations with respect to Confidential Information disclosed under this Agreement shall survive Termination of this Agreement and shall continue for as long as such information remains confidential.

### 23.9 **Returning Material, Data and Information**

- (a) Save as otherwise set out herein, upon Customer's request, and in any event on Termination of this Agreement, the Supplier shall as soon as reasonably practicable return:

- (i) all or any specified part of the HMRC Customer Data, Customer Data and any other of the Customer's Confidential Information which it received while providing the Services;
- (ii) all physical and written records containing any the Customer Data, HMRC Customer Data or the Customer's Confidential Information; and
- (iii) all documentation relating to any other Confidential Information of the Customer,

to the Customer or, by agreement with the Customer (such agreement not to be unreasonably withheld or delayed by the Supplier), destroy or delete the same in a manner specified by the Customer and promptly certify to the Customer that it has done the same.

- (b) Save as otherwise set out herein, upon Termination of this Agreement, the Customer shall as soon as reasonably practicable return:

- (i) all or any specified part of the Supplier's Confidential Information which it received from the Supplier in connection with this Agreement;
- (ii) all physical and written records containing any of the Supplier's Confidential Information; and
- (iii) all documentation relating to any other Confidential Information of the Supplier,

to the Supplier or, by agreement with the Supplier (such agreement not to be unreasonably withheld or delayed by the Customer), destroy or delete the same in a manner specified by the Supplier and promptly certify to the Supplier that it has done the same. The Customer acknowledges that the Supplier's Confidential Information includes all materials and data which contain the Supplier's proprietary Intellectual Property Rights in the Services and the VPaaS Platform.

- (c) Clause 23.9 above shall not apply in respect of any categories of Confidential Information notified by either Party to the other in writing, as may reasonably be required to be retained for archiving purposes.

## **24 OFFICIAL SECRETS ACTS**

The Supplier shall abide by the provisions of the Official Secrets Acts 1911 to 1989. The Supplier shall, by display of notices or by other appropriate means, ensure that all persons engaged on any work in connection with this Agreement have notice that these statutory provisions apply to them and shall continue so to apply after the Termination of this Agreement. Notwithstanding the generality of this Clause 24, the provisions of Clause 23.1 above shall operate without prejudice to, and be read subject to, the application of the Official Secrets Acts 1911 to 1989.

## **25 CORRUPT GIFTS, CONFLICTS OF INTEREST AND MODERN SLAVERY**

### **25.1 General**

- (a) If the Supplier or any Subcontractor or anyone employed by or acting on behalf of any of them or any of its or their agents or shareholders commits any Prohibited Act, then it shall be a Material Default by the Supplier in accordance with Clause 29.1(a)(v) below and the Customer shall be entitled either to terminate the Agreement by giving notice to the Supplier in writing or, in the circumstances specified in Clause 25.1(b) below, to act in accordance with those Clauses.
- (b) If the Prohibited Act is committed by an employee of the Supplier acting independently of that Supplier then the Customer may give notice of Termination to the Supplier and the Agreement will terminate, unless within twenty eight (28) days of receipt of such notice the Supplier:
  - (i) terminates the employee's employment and (if necessary) procures the provision of such part of the Services by another person; or
  - (ii) removes the relevant employee from participation in the provision of the Services,



and the Supplier demonstrates to the Customer's satisfaction that it has implemented adequate controls and procedures to prevent subsequent reoccurrences of the Prohibited Act, and (if necessary) procures the provision of such part of the Services by another person.

- (c) If the Prohibited Act is committed by a Subcontractor or by an employee of that Subcontractor not acting independently of the Subcontractor, then the Customer may give notice of Termination to the Supplier and this Agreement will terminate, unless within twenty eight (28) days of receipt of such notice the Supplier terminates the relevant subcontract and procures the provision of such part of the Services by another person.
- (d) If the Prohibited Act is committed by an employee of a Subcontractor acting independently of that Subcontractor then the Customer may give notice of Termination to the Supplier and the Agreement will terminate, unless within twenty eight (28) days of receipt of such notice:
  - (i) the Subcontractor terminates the employee's employment; or
  - (ii) removes the employee from participation in the provision of the Services by another person,

and the Supplier demonstrates to the Customer's satisfaction that it has implemented adequate controls and procedures to prevent subsequent reoccurrences of the Prohibited Act, and (if necessary) procures the provision of such part of the Services by another person.

## 25.2 Termination for Prohibited Acts

Any notice of Termination under this Clause 25 shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Customer believes has committed the Prohibited Act;
- (c) the date on which this Agreement will terminate; and
- (d) the Customer's chosen option under this Clause 25.

## 25.3 Exercise of the Customer's Discretion

The decision of the Customer shall be final and conclusive in any dispute, difference or question arising in respect of:

- (a) the interpretation of this Clause 25 (except so far as the same may relate to the amount recoverable from the Supplier in respect of any loss resulting from such Termination of the Agreement); or
- (b) the right of the Customer under Clause 25 of this Agreement to terminate this Agreement.

## 25.4 Conflict of Interest

In relation to the Services to be provided under this Agreement the Supplier shall use its Commercially Reasonable Efforts not to do anything, or knowingly or negligently permit a situation to arise, whereby a conflict may be created between the interests of the Customer and the Supplier. The Supplier shall not accept bribes, commissions or other improper financial inducements from any suppliers or Subcontractors in relation to the Services.

## 25.5 Modern Slavery

- (a) The Supplier shall:
  - (i) comply with all applicable anti-slavery and human trafficking law, statutes and regulations from time to time in force including the Modern Slavery Act 2015;
  - (ii) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015;
  - (iii) make reasonable enquiries to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences;
  - (iv) in its contracts with Subcontractors include anti-slavery and human trafficking provisions that are substantially the same as the provisions in this contract;
  - (v) notify the Customer immediately upon becoming aware of any actual or suspected breach of its obligations under Clause 25.5(a)(i) and/or 25.5(a)(ii), details of the breach and the mitigation action it has taken or intends to take in order to:
  - (vi) remedy the breach; and
  - (vii) ensure future compliance; and
  - (viii) prepare and deliver to the Customer an annual slavery and human trafficking report setting out the steps it has taken to ensure that human trafficking is not taking place in any of its supply chains or in any part of its business and a certificate of compliance.
- (b) If the Supplier commits a material breach of this Clause 25.5:
  - (i) in the case of a material breach of Clauses 25.5(a)(ii) or 25.5(a)(iii), such material breach shall be deemed to be a Material Default for the purposes of Clause 29.1; and
  - (ii) in the case of any other material breach, such material breach may form the basis for a Material Default in appropriate circumstances.

## 26 REPRESENTATIONS AND WARRANTIES

### 26.1 Representations and Warranties by the Supplier

- (a) The Supplier represents and warrants to the Customer that:

- (i) its signing, delivery and performance of this Agreement shall not:
  - (A) constitute a violation of any Law, or of any judgment, order or decree of any court or governmental agency to which it is a party or by which it is bound;
  - (B) constitute a violation, breach or default under any contract by which it or any of its assets (whether tangible or intangible) are bound (whether by charge, pledge, lien or otherwise); or
  - (C) result in the termination, cancellation or acceleration (whether after the giving of notice, lapse of time, or both) of any contract by which it or any of its assets (whether tangible or intangible) are bound (whether by charge, pledge, lien or otherwise);
- (ii) it has the requisite power, capacity and authority and all necessary licences, permits and consents to enter into this Agreement and to carry out the obligations contemplated herein;
- (iii) as at the Effective Date, there is no proceeding pending or, to its knowledge, threatened against it which challenges or may have a material adverse effect on this Agreement or on its ability to carry out its obligations under this Agreement;
- (iv) it has, and shall at all relevant times have, full right and authority to grant to the Customer the licences to use Supplier Software set out in this Agreement;
- (v) as at the Effective Date, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three (3) years prior to the Effective Date;
- (vi) it is not aware, as at the Effective Date, of anything within its reasonable control which shall or might adversely affect its ability to fulfil its obligations under this Agreement;
- (vii) it does not have any commitments to third parties that conflict with its obligations under this Agreement;
- (viii) it has not violated any applicable Laws or regulations or the Customer policies notified to it regarding the offering of inducements in connection with this Agreement;
- (ix) save in connection with information which is provided in circumstances where it is not reasonably practicable to provide true, accurate and complete information within the permitted time, all written information provided by it or on its behalf to the Customer during the Term, shall (to the best of its knowledge and belief) be (as at the date provided)

true, accurate and complete, and that it will advise the Customer in writing of any material fact, matter or circumstance of which it has become aware since providing such information which would render it false or misleading; and

- (x) the information and data inputted by it into the Pricing File and the Service Charges was independently established and verified by the Supplier and proposed to the Customer without collusion with any other third party, the Customer or any employee, adviser or representative of the Customer.
- (b) For the purposes of Clause 26.1(a)(ix) above, in the case of any information, representation or statement set out or referred to in a document (in whatever form, including electronic), the warranties given shall only apply to the latest version and not the prior version, of such document.
- (c) Each of Clauses 26.1(a)(i) to 26.1(a)(x) shall be construed as a separate warranty and representation on behalf of the Supplier and shall not be limited or restricted by reference to, or inference from, the terms of any other warranty or representation or any other terms of this Agreement. The Supplier acknowledges and agrees that its compliance with any or all of the warranties and representations contained in Clause 26.1 shall not of itself constitute performance of any of its other obligations under this Agreement.
- (d) Where a representation or warranty made by Supplier is untrue only by reason of a representation or warranty made by the Customer under this Agreement being untrue, the Supplier shall be relieved from its obligation to pay damages for breach of such representation and warranty contained in Clause 26.1.

## 26.2 Representations and Warranties by the Customer

- (a) The Customer represents and warrants to the Supplier as follows:
  - (i) the Customer's signing, delivery and performance of this Agreement shall not constitute a violation of any Law, or of any judgment, order or decree of any court or governmental agency to which the Customer is a party or by which the Customer is bound;
  - (ii) the Customer has the requisite power, capacity and authority and all necessary licences, permits and consents to enter into the Agreement and to carry out the obligations contemplated herein;
  - (iii) the Customer has, and shall at all relevant times have, full right and authority to grant to the Supplier the rights, licences and sub-licences (as applicable) to use the Customer Software, Customer Material, Customer Third Party Software and any Customer owned or leased equipment which is made available by the Customer to the Supplier, as set out in the Agreement;
  - (iv) as at the Effective Date, there is no proceeding pending or, to its knowledge, threatened against it which challenges or may have a material adverse effect on this Agreement or on its ability to carry out its obligations under this Agreement;

- (v) it has not violated any applicable Laws or regulations or the Customer policies regarding the offering of inducements in connection with this Agreement;
  - (vi) save in connection with information which is provided in circumstances where it is not reasonably practicable to provide true, accurate and complete information within the permitted time, all written information provided by the Customer under this Agreement to the Supplier during the Term shall (to the best of its knowledge and belief) be (as at the date provided) true, accurate and complete, and that it will advise the Supplier in writing of any material fact, matter or circumstance of which it has become aware since providing such information which would render it false or misleading; and
  - (vii) the Customer does not have any commitments to third parties that conflict with the Customer's obligations under the Agreement.
- (b) Each of Clauses 26.2(a)(i) to 26.2(a)(vii) above shall be construed as a separate warranty and representation on behalf of the Customer and shall not be limited or restricted by reference to or inference from the terms of any other warranty or representation or any other terms of the Agreement, and the Customer acknowledges and agrees that compliance by it with any or all of the warranties and representations contained in this Clause 26.2 (or any of them) shall not of itself constitute performance of any of its other obligations under the Agreement.
- (c) In consideration of the Supplier entering into this Agreement, the Customer undertakes to the Supplier that, during the Term, it shall not (itself or by its servants, agents, appointment of a third party or otherwise howsoever) attempt to operate the VME Applications otherwise than on platforms with valid VME licenses nor undertake any VME Remediation in respect of the VME Applications (the "**Remediation Arrangement**").
- (d) If the Customer breaches the Remediation Arrangement, then, in addition to any other rights or remedies the Supplier may have under this Agreement arising as a result of such breach, any discounted Charges (including the VPaaS GPLI Charges) shall be payable in full and shall not be subject to the non-remediation discount of **Redacted** but where relevant shall continue to be subject to the Term Discount.
- (e) The Parties agree that the Remediation Arrangement shall not:
  - (i) prevent the Customer from conducting lawful Application Transformation; or
  - (ii) restrict the use by the Customer (whether by subsequent agreement via the Change Control Procedure under this Agreement or otherwise) of an application on any other platform that the Customer is otherwise entitled to use where the application results from either remediation by the Supplier or Application Transformation of a VME Application undertaken by the Supplier, the Customer or a third party ("**Replacement Application**").

- (f) The Customer shall be entitled to transfer Customer Data and HMRC Customer Data from use with the Customer's VME Application to use with the Replacement Application, providing that:
  - (i) data extraction is done without the use of the Supplier's Intellectual Property (including Protected Supplier IPR) and or Confidential Information; or
  - (ii) data extraction uses the Supplier's Intellectual Property Rights (including Protected Supplier IPR and Supplier Confidential Information) to extract such data but such use is limited to the creation of data in standard CSV (comma-separated values) data format that does not reflect, rely on or reproduce the Supplier's Intellectual Property Rights or Supplier's Confidential Information.
- (g) The Supplier reserves its position as to whether the Customer would be permitted or able to perform VME Remediation without being in breach of the Supplier's Intellectual Property Rights (including its Protected Supplier IPR and Supplier Confidential Information).

### 26.3 Compliance with Laws

- (a) Each Party shall perform its obligations under this Agreement in a manner that complies with all applicable Laws in relation to, or otherwise relevant to, its obligations under this Agreement, and shall promptly notify the other Party if it receives a written allegation of non-compliance with any such Law by any person which relates to its performance of such obligations.
- (b) The Supplier shall be responsible for any filings, notifications and registrations, and for identifying and procuring permits, certificates, approvals and inspections as are required to provide the Services and its other obligations under this Agreement.

### 26.4 Changes in Law

- (a) Subject to 26.4(b), each Party shall bear its own costs for, and in respect of, any Changes in Law during the Term and the Supplier shall not be entitled to increase the Service Charges unless the Change in Law is a Discriminatory Change in Law. In the event of such a Discriminatory Change of Law occurring during the Term, the Change Control Procedure shall apply.
- (b) A Change in Law which:
  - (i) occurs following the Effective Date; and
  - (ii) impacts upon the volumes of Service or the Customer's business operations in a manner not reasonably anticipated by the Parties prior to the Effective Date, including but not limited to the assumptions as to Declarations set out in Schedule 5 (**Charges**),would be assessed and implemented as a Discriminatory Change of Law pursuant to the Change Control Procedure.

- (c) The Supplier shall use Commercially Reasonable Efforts to mitigate any increase to its costs of providing the Services which results from the occurrence of a Discriminatory Change in Law during the Term.
- (d) The provisions of this Clause shall not apply to any Change in Law which results in a change to the scope and/or rate of VAT during the Term except in circumstances where such change materially impacts the operation of the Services in respect of the Customer's VAT Application.
- (e) Nothing in this Clause 26.4 shall prevent either Party raising a CCN following a Change in Law which results, or can be reasonably be expected to result in, a reduction to the Supplier's costs of providing the Services.

## 26.5 No Additional Representations and Warranties

Save as otherwise expressly provided to the contrary in this Agreement and to the extent permitted by Law, all warranties, indemnities, terms and conditions implied by statute or otherwise are hereby excluded from operation under this Agreement.

## 27 **INDEMNITIES**

### 27.1 Indemnity by the Supplier

- (a) Except to the extent that a Claim or Loss:
  - (i) arises through the Default of the Customer, Services Recipients or any third parties engaged by the Customer in connection with this Agreement (or any of their respective officers, directors, employees, successors or assigns) (each an "**Applicable Person**"), or arises through a Force Majeure Event or a Relief Event;
  - (ii) is caused by the Supplier acting upon the instruction of an Applicable Person given in relation to the Agreement, and where the Supplier has notified, or could not reasonably be expected to have notified, the Applicable Person that the carrying out of such instruction may result in that Claim or Loss or a similar Claim or Loss; or
  - (iii) arises out of or is in respect of the Customer Software, the Customer Material or any other Software or Material provided by an Applicable Person (other than, for this purpose, the Supplier) (unless the Claim or Loss relates to Modifications carried out by or on behalf of the Supplier on or to the Customer Software, the Customer Material or any other such Software or Material),

the Supplier shall, subject to Clause 28 below (which limitations and exclusions of liability and other terms shall (save as expressed to the contrary therein) apply to the indemnities referred to in this Clause 27.1(a) and 27.1(b) below and the other indemnities set out in this Agreement), indemnify and defend the Customer and their respective officers, directors, employees, successors and assigns from and against any Losses resulting from Claims (including, where applicable, Losses resulting from Claims brought by third parties) caused by any of the circumstances set out in Clause 27.1(b) below or any of the

circumstances contemplated by any of the other indemnities set out elsewhere in this Agreement.

- (b) The circumstances referred to in Clause 27.1(a) above are as follows:
- (i) any Claim by a third party that the performance or receipt of any Supplier Software or Supplier Material (including Protected Supplier IPR) used by the Supplier or by any Subcontractor or other third party on behalf of the Supplier in providing the Services (including as part of any Work Product but excluding any Customer Material and/or Customer Software) or any Work Product created by or on behalf of the Supplier in providing the Services (excluding (other than as set out in Clause 27.1(b)(ii) below) any Customer Material and/or Customer Software), or the possession, use, or reproduction of any of the same by or on behalf of the Customer (or any other Applicable Person or any other person validly licensed in accordance with Clause 12 above) in the intended manner under this Agreement actually or allegedly infringes a third party's Intellectual Property Rights, or rights in respect of confidential information, provided that this Clause 27.1(b)(i) shall not apply to the extent that any infringement is caused by:
    - (A) any Modifications, other than those created by or on behalf of the Supplier;
    - (B) the use of Supplier Software, Supplier Materials or Protected Supplier IPR in combination with any other Intellectual Property Rights:
      - 1) not provided by or on behalf of the Supplier under the Agreement; or
      - 2) not approved (such approval not to be unreasonably withheld or delayed) by or on behalf of the Supplier, unless the Supplier is responsible for the integration of any Supplier Software, Supplier Materials or Protected Supplier IPR with any other software or materials;
    - (C) the use of Software or Materials by or on behalf of the Customer outside the Territory; or
    - (D) the use of the Customer Software or the Customer Material;
  - (ii) any Claim by a third party that any of the Customer Software or Customer Material infringes a third party's Intellectual Property Rights, if the Claim is caused by the Supplier or other person authorised by or acting together with the Supplier having used, Modified, reproduced or exploited any the Customer Software or the Customer Material in contravention of any material term or material condition that the Customer has disclosed to the Supplier;
  - (iii) any fine or other penalty imposed by Law on the Customer or any Services Recipient (excluding Services Recipients outside of the UK) which is caused by a Default by the Supplier;



- (iv) any breach by the Supplier of the Supplier's confidentiality obligations under this Agreement;
  - (v) death or personal injury caused by a negligent act or omission of the Supplier where the Supplier is legally liable for that death or personal injury;
  - (vi) loss or damage to real or tangible personal property (excluding loss of or damage to data) including to the Technical Infrastructure or Customer Accommodation where the Supplier is legally liable for that loss or damage;
  - (vii) any:
    - (A) un-recovered overpayment paid to a third party or any un-recovered under-payment made to the Customer by a third party, in each case caused by a Default of the Supplier; or
    - (B) compensation or interest paid to a third party caused by a Default of the Supplier;
  - (viii) any Claim by a third party caused by a Default of the Supplier which causes any breach by the Customer or any Services Recipient (excluding Services Recipients outside of the UK) of any of its statutory duties (except to the extent that such a Claim is already provided for under any other sub-Clause in this Clause 27.1(b));
  - (ix) any Claim by a third party caused by a Default of the Supplier which is caused by the loss or corruption of any of the data (including the Customer Data and the HMRC Customer Data) held or controlled by the Supplier in connection with the Services; and
  - (x) any Claim by third parties caused by a Default of the Supplier which causes any breach by the Customer of any of its duties under the Data Protection Legislation.
- (c) The Supplier's liability to the Customer under the indemnities referred to in Clauses 27.1(a) and 27.1(b) above and the indemnities set out elsewhere in this Agreement shall be without prejudice to any other right or remedy available to the Customer and, in particular, shall not prejudice in any way the ability of the Customer to enforce any Guarantee given in accordance with Clause **Error! Reference source not found.** (Deed of Guarantee) or any replacement guarantee.

## 27.2 Indemnity by the Customer

- (a) Except to the extent that a Claim or Loss:
  - (i) arises through the Default of the Supplier; or
  - (ii) is caused by the Customer or an Applicable Person acting upon the instruction of the Supplier, given in relation to this Agreement and where the Customer or the Applicable Person has notified or could not

reasonably be expected to have notified, the Supplier that the carrying out of such instruction may result in that Claim or Loss or a similar Claim or Loss,

the Customer shall, subject to Clause 28 below (which limits and exclusions of liability and other terms shall (save as expressed to the contrary therein) apply to the indemnities referred to in this Clause 27.2 and the other indemnities set out in this Agreement), indemnify and defend the Supplier and its officers, directors, employees, successors and assigns from and against any Losses resulting from Claims (including, where applicable, Losses resulting from Claims brought by third parties) caused by any of the circumstances set out in Clause 27.2(b) or any of the circumstances contemplated by any of the other indemnities set out elsewhere in this Agreement.

- (b) The circumstances referred to in Clause 27.2(a) above are as follows:
- (i) any Claim by a third party that the performance or receipt of any Customer Software or Customer Material, used by or on behalf of the Supplier (including by any Subcontractors) or the possession, use or reproduction of any of the same by or on behalf of the Supplier in the intended manner under this Agreement, actually or allegedly infringes a third party's Intellectual Property Rights, or rights in respect of confidential information except to the extent that such Claim is caused by the fact that the same has been Modified by or on behalf of the Supplier, provided that this Clause 27.2(b)(i) shall not apply to the extent that any infringement is caused by:
    - (A) the use of Customer Software or Customer Material in combination with any other Intellectual Property Rights not provided by or on behalf of the Customer under the Agreement; or
    - (B) the use of Customer Software or Customer Materials by or on behalf of the Supplier outside the Territory;
  - (ii) any Claim that the Customer or any Services Recipient has utilised or used the Supplier's Intellectual Property Rights, and whether directly or indirectly, in a manner which contravenes the terms of this Agreement and the rights of use granted herein (including any related VME licence (including the VME Licence)) or which is an infringement at Law of the Supplier's Intellectual Property Rights;
  - (iii) death or personal injury caused by a negligent act or omission of the Customer where the Customer is legally liable for that death or personal injury;
  - (iv) any fine or other penalty imposed by Law on the Supplier or any Subcontractor which is caused by a Default by the Customer;
  - (v) any breach by the Customer of the Customer's confidentiality obligations under this Agreement;
  - (vi) loss or damage to real or tangible personal property (excluding loss or

damage to data) of the Supplier or any Subcontractor where the Customer is legally liable for that loss or damage; and

- (vii) any Claim by a third party that any Supplier Software or Supplier Material infringes a third party's Intellectual Property Rights, if the Claim is caused by the Customer or any Third Party Supplier on behalf of the Customer (excluding for this purpose the Supplier and all Subcontractors) having used, Modified, reproduced or exploited any Supplier Software or Supplier Material in contravention of any material term or material condition that the Supplier has disclosed to the Customer or any Third Party Supplier acting on behalf of the Customer.

### 27.3 Anticipation of Infringement

- (a) If any item of Work Product or any item (including any Supplier Software, Supplier Third Party Software, Supplier Material, Supplier Third Party Material or Equipment) used by the Supplier to provide the Services becomes, or in the reasonable opinion of either Party is likely to become, the subject of a Claim, the Supplier shall, at its own cost and expense and in addition to the Supplier's obligation (if applicable) to indemnify and to any other rights that the Customer may have under this Agreement either, at its election and acting promptly:
  - (i) use Commercially Reasonable Efforts to secure the right for the item to continue to be used on terms which are reasonably acceptable to the Customer (such acceptance not to be unreasonably withheld or delayed);
  - (ii) use Commercially Reasonable Efforts to replace or Modify the item to make it non-infringing, provided that any such replacement or Modification shall not materially degrade the performance, functionality or quality of the affected component of the Services or result in a failure to meet the Service Levels or entitle the Supplier to increase the Service Charges; or
  - (iii) remove the infringing item from the Services and substitute an alternative for the Services affected by such removal, provided that:
    - (A) such substitution shall be effected on the terms of Clause 12; and
    - (B) the Service Charges shall be equitably adjusted to reflect any change in performance or functionality provided that any proposed increase in the Service Charges shall only be implemented where such increase has been agreed by the Customer pursuant to Schedule 7 (**Change Control Procedure**).

### 27.4 Enforcement of Indemnities

It is not necessary for a Party to incur any expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

### 27.5 Indemnification Procedures

- (a) Each Party (the "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") in detail in writing (a "**Notice of Claim**") promptly after it becomes aware of any event or any Claim against it which it believes may give rise to a claim for indemnification under the provisions of these indemnity obligations or any other obligation to indemnify expressed elsewhere in this Agreement (an "**Indemnified Claim**"), provided that a delay in promptly notifying the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except and to the extent that such delay on the part of the Indemnified Party results in an increase to the Losses of the Indemnified Party.
- (b) Within ten (10) Working Days following receipt of Notice of Claim from the Indemnified Party, but no later than ten (10) Working Days before the date on which any response to legal process (excluding the filing of an acknowledgment of service or its equivalent) is due, the Indemnifying Party shall notify the Indemnified Party in writing if the Indemnifying Party elects to assume the conduct and control of the defence and/or settlement of that Indemnified Claim (a "**Notice of Election**").
- (c) Provided that the Indemnifying Party delivers a Notice of Election within the specified period or within such other period as the Parties shall (acting reasonably) agree, the Indemnifying Party shall be entitled, at its own expense, to control the conduct, defence and/or settlement of any litigation and negotiations arising in respect of the Indemnified Claim, subject to Clause 27.5(g) below, and provided that where there is an impact on the Indemnified Party, the Indemnifying Party shall consult with the Indemnified Party and shall at all times keep the Indemnified Party informed of all material matters. The Indemnified Party shall be entitled to participate and employ legal assistance in any such litigation or negotiations, provided that unless the participation of the Indemnified Party was in response to a request by the Indemnifying Party, the Indemnifying Party shall not be liable to the Indemnified Party for any legal costs and expenses relating to the Indemnified Claim incurred after the Indemnifying Party delivered a Notice of Election.
- (d) At the request of the Indemnifying Party, the Indemnified Party shall (as requested from time to time) afford to the Indemnifying Party all reasonable assistance and documentation (but having due regard to any obligations of confidentiality owed by the Indemnified Party to any other party) for the purpose of contesting or dealing with any Indemnified Claim, and shall act as or be joined as defendant in legal proceedings. The Indemnifying Party shall promptly reimburse the Indemnified Party for its reasonable costs and expenses incurred in so doing.
- (e) If the Indemnifying Party does not deliver a Notice of Election relating to the Indemnified Claim, or otherwise fails to assume the conduct and control of the Indemnified Claim within the required notice period, or ceases to defend or deal with the Indemnified Claim, the Indemnified Party shall have the right to defend the Indemnified Claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party, including payment of any judgment or award and the costs of settlement or compromise of the Indemnified Claim. The Indemnified Party shall keep the Indemnifying Party informed of all material matters relating to such defence or settlement. The

Indemnifying Party shall promptly reimburse the Indemnified Party for all such reasonable costs and expenses incurred in so doing.

- (f) At the request of the Indemnifying Party, the Indemnified Party shall assign or otherwise pass-through to the Indemnifying Party, to the extent the Indemnified Party is able, the benefit of any indemnities given to the Indemnified Party by third parties which are applicable to the Indemnified Claim.
- (g) The Indemnified Party shall not make any admissions (save where required by court order or governmental regulations) nor knowingly do any other act or thing which may be prejudicial to the defence or settlement of any Indemnified Claim, without the prior written approval of the Indemnifying Party.
- (h) The Indemnifying Party shall not cease to defend, compromise or settle any Indemnified Claim without the Indemnified Party's prior written consent, if such compromise or settlement:
  - (i) would impose an injunction or other equitable relief upon the Indemnified Party; or
  - (ii) does not include the third party's release of the Indemnified Party from all liability relating to such Indemnified Claim.
- (i) If an Indemnifying Party is obliged to indemnify an Indemnified Party pursuant to this Clause 27 or pursuant to any other indemnity set out in this Agreement, the Indemnifying Party shall, upon fulfilment of its obligations with respect to the Indemnified Claim including payment in full of all amounts due pursuant to its indemnification obligations, be subrogated to the rights of the Indemnified Party with respect to the Indemnified Claim.
- (j) The indemnities given in this Agreement are subject to the Indemnified Party using all Commercially Reasonable Efforts to mitigate against all Claims and Losses including the amount claimable pursuant to an indemnity hereunder being reduced by any amount recovered from any third party, provided that in the case of the indemnity given in Clause 27.1(b)(vii) above, due regard shall be given to the extent to which such action is likely to succeed or can reasonably be expected to cause unacceptable distress to low income or elderly citizens or other vulnerable persons.

## **28 LIMITATION OF LIABILITY**

### **28.1 *Redacted***

### **28.2 Liability to Pay**

Clause 28 is without prejudice to (and the limitations and exclusions set out in this Clause 28 shall not apply to) the liability of the Customer to pay the Service Charges, Pass-Through Expenses, the charges to be paid by Customer pursuant to Clauses 29.7 and 29.8 below and to the liability of the Supplier to pay Service Credits under the Agreement.

### **28.3 Uncapped Losses**

Nothing in the Agreement shall be deemed to exclude or limit either Party's liability in respect of:

- (a) death or personal injury arising as a result of that Party's negligence, fraud or 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;
- (b) any indemnity given by the Supplier under Clause 27.1(a) above in the circumstances set out in Clauses 27.1(b)(i), 27.1(b)(ii), 27.1(b)(iv), 27.1(b)(v) and 27.1(b)(vi) above and by the Customer under Clause 27.2(a) in the circumstances set out in Clauses 27.2(b)(i), 27.2(b)(ii), 27.2(b)(v) and 27.2(b)(vi) above;
- (c) Losses occasioned by the wrongful Termination or wilful abandonment of the Agreement by the Supplier or the Customer;
- (d) the indemnities given by the Supplier under Sections 4.3(a), 5.3(a) and 6.4(a)(v) of Annex 14-5 of Schedule 14 (**Employees and Subcontractors**), the payment of redundancy costs by the Supplier pursuant to Section 4.3(b) of Annex 14-5 of Schedule 14 (**Employees and Subcontractors**), the payment of the cash value of any benefits pursuant to Section 6.4(a)(iii) of Annex 14-5 of Schedule 14 (**Employees and Subcontractors**) and the indemnity given by the Customer under Section 5.3(b) of Annex 14-5 of Schedule 14 (**Employees and Subcontractors**); or
- (e) otherwise to the extent that such exclusion or limitation is not permitted by Law.

#### 28.4 Excluded Losses

- (a) Subject to Clauses 28.1, 28.3, 29.7 and 29.8, neither Party shall be liable to the other Party under this Agreement (whether arising in contract, tort (including negligence) or otherwise and whether or not the Party had prior knowledge of the circumstances giving rise to such loss or damage) for:
  - (i) indirect or consequential losses or damages;
  - (ii) loss of actual or anticipated profits (save to the extent that recovery of such losses is expressly provided for herein);
  - (iii) loss of revenue (save to the extent that recovery of such loss is expressly provided for herein);
  - (iv) loss of goodwill;
  - (v) loss of anticipated savings (save to the extent that the recovery of such savings is expressly provided for herein); or
  - (vi) any losses arising as a result of any third party bringing a claim in respect of any of the types of loss referred to in Clauses 28.4(a)(i) to 28.4(a)(v) above other than to the extent that such type of loss is included as part of an Indemnified Claim.

## 28.5 General

- (a) If an exclusion or limitation of liability under a sub-Clause of this Clause 28 is found to be invalid, such finding of invalidity should not affect the validity of the other sub-clauses of this Clause 28 which are intended to be construed, in this context, as separate limitations or exclusions of liability.
- (b) The Customer acknowledges that the Supplier has calculated the Service Charges in the Agreement on the basis that the Supplier will exclude or limit its liability as set out in the Agreement and agrees that had the exclusions and limitations set out above not been agreed the Supplier would not have agreed the Service Charges at the level at which they now appear.
- (c) The Supplier acknowledges that the exclusions and limits of its liability as set out in the Agreement have been agreed following negotiations between the Parties and are considered by the Parties to be reasonable in all of the circumstances relating to the Agreement.
- (d) The Parties agree that their intent is to ensure that notwithstanding their entering into this Agreement, each Party's limit of liability to the other should not be, in aggregate, either greater or less than it was immediately prior to entering into this Agreement, pursuant to the liability risk allocation that was documented in the Prime Agreement and the CHIEF Agreement. The Parties shall seek to interpret and implement the liability provisions of this Agreement in order to give effect to this intent.

## 29 **TERMINATION**

### 29.1 Termination by the Customer for Supplier Default or Insolvency

- (a) Without prejudice to any other rights or remedies it may have, the Customer, by giving written notice to the Supplier, may terminate this Agreement immediately as of the date specified in the notice of Termination if any of the following circumstances occur or exist:
  - (i) the Supplier commits a Material Default, which is not cured:
    - (A) within thirty (30) days after written notice of the Material Default from the Customer to the Supplier, unless a longer period is agreed by the Customer in accordance with Clause 29.1(a)(i)(B) below; or
    - (B) where (following receipt of the written notice referred to in Clause 29.1(a)(i)(A) above) a remedial plan is proposed by the Supplier and agreed by the Customer, within the timetable agreed between the Parties and set out in such remedial plan;
  - (ii) the Supplier commits a Material Default of this Agreement which is not capable of being cured;
  - (iii) the Supplier commits repeated breaches of its obligations under this Agreement (whether of the same or different obligations and regardless of whether these breaches are cured), the cumulative effect of which is

a Material Default;

- (iv) the Supplier, or any Affiliate of the Supplier brings the Customer into disrepute by engaging or having engaged in significant non-fulfilment of obligations relating to the payment of taxes in the United Kingdom or any member of the European Union, the United States of America or Japan; or
  - (v) the Supplier or any Subcontractor or anyone employed by or acting on behalf of any of them or any of its or their agents or shareholders commits any Prohibited Act and the Customer serves a notice of Termination in accordance with Clause 25 unless, in the case of a Prohibited Act falling within the provisions of Clause 25.1(a), the required remedial action has been taken within the specified period; or
  - (vi) in the circumstances set out in Clauses 32.17(d) or 32.18 below.
- (b) Without prejudice to any of the rights or remedies it may have, the Customer, by giving written notice to the Supplier, may terminate this Agreement immediately, as of the date specified in the notice of Termination upon the occurrence of an Insolvency Event.

## **29.2 Termination by the Customer for Convenience**

- (a) Subject to the payment of the Termination Charges, the Customer, by giving not less than six (6) months' written notice to the Supplier, may terminate this Agreement, as of the date specified in the notice of Termination.
- (b) If a purported Termination by the Customer of the Agreement under Clauses 29.1 or 29.3 is determined by a court of competent jurisdiction not properly to be a Termination for Material Default or Termination for Change of Control, then such Termination shall be deemed to be a Termination for convenience and shall be subject to the payment of the Termination Charges.
- (c) If, in respect of a purported Termination of the Agreement pursuant to Clause 25.3 above, the Customer is determined by a court of competent jurisdiction not to have exercised the discretion conferred on the Customer pursuant to the provisions of Clause 25.3 above reasonably and/or in good faith, then such Termination shall be deemed to be a Termination for convenience and shall be subject to the payment of the Termination Charges.

## **29.3 Termination by the Customer for Change of Control of the Supplier**

- (a) The Customer, by giving not less than six (6) months' written notice to the Supplier, may terminate this Agreement as of the date specified in the notice of Termination if there is a Change of Control of the Supplier which means the Supplier is now under the Control of:
  - (i) a third party with which the Customer or another Government Department is in material dispute on a material contract or a number of other contracts which the Customer reasonably regards as having a material effect;



- (ii) a foreign government;
  - (iii) a third party which, in the Customer's reasonable opinion, poses a threat to national security;
  - (iv) a third party which could bring the Customer into disrepute in terms of Clause 29.1(a)(iv) above or Clause 32.17 below or non-compliance with the obligations referred to in Clause 32.18 below; or
  - (v) a third party which the Customer considers to be undesirable for reasons connected with monitoring or enforcing compliance with the statutes and regulations for the enforcement of which the Customer has statutory responsibility. To the extent, and as soon as, reasonably practicable for it to do so, the Customer will notify the Supplier of those reasons.
- (b) The right of Termination pursuant to Clause 29.2(a) above shall only be exercisable by the Customer giving notice of such Termination within six (6) months of the completion of the transaction (or in the case of a series of related transactions, the final transaction) constituting such Change of Control. Notwithstanding any other provision of this Agreement, the Supplier shall provide prompt notice to the Customer in the event of a Change of Control of the Supplier and, in such event, the six (6) month period in which the Customer has a right to exercise Termination in accordance with Clause 29.2(a) shall not commence until receipt of such notice from the Supplier.

#### **29.4 Termination Rights of the Supplier**

- (a) Subject to Clauses 29.4(b) below, the Supplier, by giving written notice to the Customer, may terminate this Agreement as of the date specified in the notice of Termination, which date shall not fall before the expiry of the ninety (90) day period described in Clause 29.4(b) below, if the Customer fails to pay to the Supplier, when due under this Agreement, any undisputed Service Charges, undisputed Pass-Through Expenses (to the extent that such Pass-Through Expenses have been paid by the Supplier) or any other undisputed sums which are properly due and payable pursuant to this Agreement, which in aggregate exceed an amount equal to the average value of the monthly invoices in the twelve (12) preceding months.
- (b) The Supplier shall not terminate the Agreement in accordance with Clause 29.4(a) above unless the Supplier has given the Customer:
- (i) ninety (90) days' notice of the Customer's failure to make such payment (including notice that continued failure to make payment will lead to Termination by the Supplier); and
  - (ii) a further written notice to the Customer not less than thirty (30) days prior to the expiry of the ninety (90) days (expressly stating that this Agreement will terminate unless the unpaid amounts are paid),

and the Customer fails to make full payment of the due and outstanding sum (which sum shall be referred to in the notices described in Clauses 29.4(b)(i) and 29.4(b)(ii) above) prior to the expiry of the period referred to.

## 29.5 Accrued Rights

The Termination (including the expiry) of this Agreement shall not affect any accrued rights of either Party.

## 29.6 Survival of Terms

All terms of this Agreement shall continue to have full force where such terms are expressly, or by their nature, intended to survive Termination of this Agreement, including, but not limited to, Clauses 1, 5.3(b), 5.3(c), 5.3(d), 5.3(e), 5.3(g), 5.3(h), 5.3(i) and 5.3(j), 8 and 9 (insofar as is necessary in order for any Service Charges to be recovered following Termination), 12 (insofar as is necessary to give effect to any rights granted beyond Termination), 22.1, 23, **Error! Reference source not found.**, 27, 28, 29.5, 29.6, 29.7, 29.8, 31, 32.1, 32.2, **Error! Reference source not found.**, 32.6, 32.7, 32.10, 32.11, 32.13, 32.14 and 32.16.

## 29.7 Consequences of Termination

(a) The Parties agree that:

- (i) save for those payments that the Customer is liable to make in accordance with this Clause 29.7 and Clause 29.8, the Customer shall not be liable to make any other payments or provide any other compensation to the Supplier on Termination (in accordance with this Agreement) of the Services; and
- (ii) Termination (in accordance with this Agreement) of the Services, including payment of a sum to the Supplier in accordance with this Clause 29.7, is without prejudice and in addition to:
  - (A) any Claims that the Customer may have against the Supplier (including those relating to any Default, act or omission of the Supplier);
  - (B) the Customer's obligations as to payment of the Service Charges that are due and payable as at the date of Termination (together with any interest payable in respect of such payments); and
  - (C) any Claims unrelated to the event giving rise to the Termination of the Services that the Supplier may have against the Customer.

(b) In advance of Termination of the Services for whatever reason, and, within a reasonable period of time prior to the expiry of the Term, the Supplier shall provide all reasonable assistance in relation to:

- (i) the transfer of the Customer Data back to the Customer or to a new service provider appointed by the Customer; or
- (ii) the establishment of an alternative service and constituting additional support in the event of any parallel running or service migration, any knowledge transfer reasonably required and appropriate to a non-VME system, provision of volumetrics information and service management information,

such assistance being chargeable in accordance with the Supplier's Rate Card ("**VPaaS Termination Assistance Services**"). The Parties agree that if the Customer requires any exit assistance in addition to the VPaaS Termination Assistance Services, the Supplier may provide such assistance upon mutual agreement between the Parties and such assistance shall be chargeable in accordance with the Supplier's Rate Card.

## 29.8 Termination Charges

- (a) In the event of Termination of this Agreement by the Customer for convenience under Clause 29.2 or by the Supplier in accordance with Clause 29.4, the Customer shall pay the Termination Charges set out in Appendix 5-2 of Schedule 5 (**Charges**).

## 30 INSURANCE AND RISK

Both Parties shall comply with the provisions of Schedule 16 (**Insurance**).

## 31 DISPUTE RESOLUTION AND CHOICE OF LAW

Any dispute between the Parties arising out of or relating to the Agreement shall be resolved in accordance with Schedule 8 (**Governance**) and this Clause 31.

### 31.1 Informal Dispute Resolution

- (a) Subject to Clause 31.1(b), the Parties shall attempt to resolve disputes between the Parties arising out of or relating to this Agreement using the informal dispute resolution procedure set out in Schedule 8 (**Governance**) prior to the initiation of the alternative dispute resolution procedure or the formal Escalation Processes set out in Schedule 8 (**Governance**).
- (b) Nothing in this Clause 31.1 shall at any time while the informal dispute resolution procedures are in progress, or before or after they are invoked, restrict either Party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect confidentiality or any Intellectual Property Right or trade secret right.

### 31.2 Equitable Relief

Each Party shall be entitled to apply for equitable relief against the other Party (in addition to any other rights available under this Agreement or at Law) for any breaches of its obligations under this Agreement.

### 31.3 Continued Performance

The Customer and the Supplier shall continue to perform their respective obligations under this Agreement pending the resolution of a dispute, provided that nothing in this Clause 31 prevents or restricts a Party from lawfully exercising any of its termination rights pursuant to Clause 29 above at any time.

### 31.4 Governing Law and Jurisdiction

- (a) This Agreement and any disputes or claims arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

- (b) Subject to the Escalation Process and Clause 31.5 below, all disputes or claims arising out of or relating to the Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the Parties irrevocably submit.

### 31.5 ARBITRATION

- (a) Subject to compliance with its obligations under the Escalation Process, the Customer may, at any time before court proceedings are commenced, refer a dispute to arbitration in accordance with the provisions of Clause 31.5(e).
- (b) Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer 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 Clause 31.5(e) or be subject to the exclusive jurisdiction of the English courts. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- (c) If the Customer serves a Counter Notice, then:
  - (i) if the Counter Notice requires the dispute to be referred to arbitration, the provisions of Clause 31.5(e) shall apply; or
  - (ii) if the Counter Notice requires the dispute to be subject to the exclusive jurisdiction of the English courts, the dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- (d) If the Customer does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Clause 31.5(b), the Supplier may either commence arbitration proceedings in accordance with Clause 31.5(e) or commence court proceedings in the English Courts which shall (in those circumstances) have exclusive jurisdiction.
- (e) The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Clauses 31.5(a) to 31.5(d):
  - (i) the dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Clauses 31.5(e)(v), (vi) and (vii));
  - (ii) the arbitration shall be administered by the LCIA;
  - (iii) 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 this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - (iv) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working 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;

- (v) the chair of the arbitral tribunal shall be British;
- (vi) the arbitration proceedings shall take place in London and in the English language; and
- (vii) the seat of the arbitration shall be London.

## **32 GENERAL**

### **32.1 Non-Solicitation of Employees**

- (a) Subject to Schedule 14 (**Employees and Subcontractors**), during the Term and for a period of six (6) months after the Termination Date, neither Party shall directly or indirectly solicit or attempt to solicit, without the prior written consent of the other Party:
  - (i) in the case of the Customer, any of the Supplier Personnel employed or engaged in the provision of the Services at the date of such solicitation or attempted solicitation or who have been so employed or engaged during the preceding six (6) months, unless the Customer terminates the Agreement for Material Default, in which case no restrictions shall apply to the Customer's rights to solicit Supplier Personnel; and
  - (ii) in the case of the Supplier, any of the Customer's personnel employed or engaged in provision of its information systems, or management of receipt of the provision of the Services, at the date of such solicitation or attempted solicitation or who have been so employed or engaged during the preceding six (6) months.
- (b) For the purposes of this Clause, "**solicit**" means an approach by a Party or a third party on its behalf to an individual with a view to employ or engage or procure the employment or engagement of such person as an employee, director, officer or independent contractor or consultant, other than by way of general advertising.

### **32.2 Public Statement**

- (a) Except with the prior written approval of the other Party, neither Party shall make any public statement or press announcement in relation to this Agreement or its performance, unless, in the case of any statement or announcement on behalf of the Customer, such statement or announcement is for parliamentary, governmental, statutory or judicial purposes, or involves presentations relating to the Customer's experience in managing the Agreement and discussions around best practice in IT contracting, in which case no such approval shall be required. The Supplier shall be entitled to make a reasonable response to any such statement or announcement on behalf of the Customer, to the extent that a response by the Supplier is required in order to protect the Supplier's legitimate corporate interests in circumstances where the Customer's statement or announcement has had or is likely to have a material adverse impact on the Supplier's share price and reputation. To the

extent that the Agreement is subject to a Parliamentary related hearing which is intended to take place over a specified period of time, the Parties shall acting reasonably agree a restriction on the Supplier's aforementioned right to make a statement or announcement until the time of conclusion of such hearing.

- (b) Subject to Clause 32.2(a) above, the Supplier shall:
  - (i) submit to the Customer any advertising, written sales promotions, press releases, public announcements and other promotional, marketing or publicity material relating to this Agreement used by the Supplier or Subcontractors in which the Customer's name or any corresponding logo or trade mark is mentioned or which contains language from which connection with said name, or of any corresponding logo or trade mark may be inferred or implied ("**Publicity Material**");
  - (ii) not publish or use (or authorise the publication or use) of any Publicity Material without the Customer's prior written consent; and
  - (iii) co-ordinate with the Customer any press releases or public announcement that it makes in relation to this Agreement.
- (c) Notwithstanding Clause 32.2(a) above, the Supplier may use the Customer's name for the purposes of internal announcements within its organisation.
- (d) Any Publicity Material used by the Supplier shall make clear that the Customer does not endorse the Supplier or its provision of the Services, and any description of the Services in such Publicity Material shall be in general terms only.
- (e) The Customer's decision in relation to this Clause 32.2 shall be final and conclusive.

### 32.3 ***Redacted***

### 32.4 **Relationship of Parties**

- (a) The Supplier, in providing the Services, shall be acting as an independent contractor. Nothing in this Agreement, including references to "partnership", shall create any relationship of agent and principal, (except pursuant to Clause 8.2 (**Pass-Through Expenses**) or the Indemnification Procedure), partnership, or employer and employee between the Parties or between one of the Parties and the other Party's personnel, agents, employees or subcontractors.
- (b) Nothing in this Agreement shall give either Party any authority to act or make representations or commitments on behalf of the other Party or to create any contractual liability to a third party on behalf of the other Party.

### 32.5 **No Security**

The Supplier shall not give or purport to give any Security Interest specifically in and which solely relates to any of its rights to receive payment from the Customer under this Agreement without the Customer's prior written consent, which the Customer may

withhold in its sole discretion provided that the foregoing shall not prevent the Supplier from entering into covenants with its financiers and bankers on normal commercial terms in the ordinary course of the Supplier's business.

### 32.6 **Waivers, Consents and Approval**

- (a) The failure of any Party to insist upon strict performance of any provision of this Agreement, or the delay or failure of any Party to exercise any right to which it is entitled hereunder, shall not constitute:
  - (i) a waiver or diminution of that right or any other right hereunder; or
  - (ii) a waiver in respect of any subsequent breach by the other Party.
- (b) A waiver by any Party of any of the terms of this Agreement shall not be effective unless it is expressly stated in writing and executed by the duly authorised representative of such Party. Any such waiver or release of any right or remedy of either Party shall:
  - (i) be confined to the specific circumstance in which it is given;
  - (ii) not affect any other enforcement of the same or any other right; and
  - (iii) be revocable at any time in writing (unless it is expressed to be irrevocable), provided that any such revocation shall not operate retrospectively.
- (c) The waiver by any Party of a breach or Default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver in respect of any subsequent breach of the same or other provisions, unless expressly stated by the waiving Party in writing.
- (d) Any consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as, and to the extent, expressly so provided in such consent.
- (e) Where, in this Agreement, any obligation of a Party is to be performed in a specified time limit, that obligation shall be deemed to continue after that time limit if the Party fails to comply with that obligation within the time limit.
- (f) Except where expressly provided as being in the discretion of a Party (in which event such discretion shall be sole and absolute), where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed, conditioned or withheld.

### 32.7 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, and, in the absence of fraud, supersedes any prior warranties, indemnities, undertakings, conditions, understanding, commitments, representations or agreements between the Parties, whether oral or

written.

### 32.8 **Variation**

No amendment or variation to this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each Party.

### 32.9 **Counterparts**

This Agreement may be executed in several counterparts or duplicates, each of which shall be deemed to be an original but all of which taken together shall constitute one single agreement between the Parties.

### 32.10 **Cumulative Rights**

Except as otherwise expressly provided herein, a right, power, remedy, entitlement or privilege given or granted to a Party under this Agreement is cumulative with, without prejudice to, and not exclusive of any other right, power, remedy, entitlement or privilege granted or given under this Agreement or by Law and may be exercised concurrently or separately.

### 32.11 **Reading Down and Severability**

- (a) If a provision of this Agreement is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.
- (b) Subject to Clause 32.11(a) above, if any provision of this Agreement is prohibited by Law or found by a court or authority of competent jurisdiction to be void, illegal, invalid or otherwise unenforceable, such provision shall be severed and the remainder of this Agreement shall continue in full force and effect to the fullest extent permitted by Law, as if this Agreement had been executed with the void, illegal, invalid or unenforceable provision eliminated. The Parties agree to negotiate in good faith in order to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves, to the greatest extent possible, the economic, legal and commercial objectives of the invalid or unenforceable provision.

### 32.12 **Costs**

Each Party shall bear its own legal and other costs and expenses of, and incidental to, the preparation, negotiation, execution, completion and, if applicable, notification and/or registration of this Agreement and of any related documents or instruments. The Supplier shall pay any stamp duty payable on execution of this Agreement or any related documents or instruments to which the Supplier is a party.

### 32.13 **Third Party Rights**

Nothing in this Agreement shall be deemed to grant any rights or benefits to any person other than the Parties or their respective successors in title or assignees



(referred to in this Clause 32.13 as a "third party"), or entitle any third party to enforce any provision hereof and the Parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### 32.14 Further Assurance

The Parties shall, and shall procure that their agents, employees and subcontractors shall, do all things reasonably necessary, including executing any additional documents and instrument, to give full effect to the terms and conditions of this Agreement.

#### 32.15 Assignment

- (a) This Agreement is binding on and shall inure to the benefit of the Parties and their respective permitted successors in title and assignees.
- (b) This Agreement is personal to the Supplier. The Supplier shall not assign, novate or otherwise transfer or dispose of any of its rights or obligations under this Agreement without the prior written consent of the Customer, which shall not unreasonably be withheld, and any attempt by the Supplier to assign, novate or otherwise transfer or dispose of its rights or obligations in violation hereof shall be null and void as between the Parties.
- (c) The Supplier hereby consents that, by giving the Supplier prior written notice, the Customer may assign, novate, sub-contract or otherwise dispose of, and be released from, any or all of its rights and/or obligations under the Agreement:
  - (i) to any Contracting Authority;
  - (ii) to any successor to the Customer following a reorganisation within government or to any body (including any private sector body) other than a Contracting Authority which substantially performs any of the functions that previously had been performed by the Customer (or its predecessor departments) (provided that: (i) there will be, in the Supplier's reasonable opinion, no change to the risks and their allocation within the Agreement; and (ii) in the case of a private sector body only, if such body does not have a credit rating substantially similar to that of the Customer, then the Parties shall agree a reasonable adjustment to the Service Charges to compensate the Supplier for any increase in its funding costs necessarily incurred as a result of such assignment, novation or other disposal); or
  - (iii) (only with the prior written consent of the Supplier (which shall not be unreasonably withheld or delayed)) to any other person. In respect of any proposed assignment to a private sector body, the Parties shall discuss and agree any reasonable changes required to the terms of this Agreement to reflect the fact that the Customer entity shall no longer be a public sector customer,

provided that the Customer's assignee or successor in title undertakes in writing to the Supplier to be bound by the obligations of the Customer under the Agreement.

- (d) Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not affect the validity of the Agreement. In such circumstances, the Agreement shall be binding on any successor body to the Customer.
- (e) If the Agreement is assigned or novated by the Customer other than as contemplated under Clause 32.15(c) above:
  - (i) the rights of termination of the Customer in Clause 29.2 above shall be available, *mutatis mutandis*, to the Supplier in the event of the Change of Control, bankruptcy, insolvency or default of the transferee; and
  - (ii) following the assignment or novation by the Customer, the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof with the previous consent in writing of the Supplier.
- (f) Notwithstanding anything to the contrary contained in this Agreement, either Party may also provide a copy of this Agreement to a prospective assignee or successor in title, provided that such assignee or successor in title is subject to a suitable non-disclosure agreement containing obligations of confidentiality at least equivalent to those contained in Clause 23.

### 32.16 Appointment of Representatives

The Customer shall be entitled to appoint any third party representatives on its behalf to perform obligations upon it or exercise rights available to it under the Agreement, subject to in respect of any private sector body, the Parties discussing and agreeing in accordance with the Change Control Procedure, any reasonable changes required to the terms of this Agreement to reflect such appointment.

### 32.17 Use of Offshore Tax Structures

- (a) Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that the other Supplier Group Companies, shall not, have or put in place (unless otherwise agreed with the Customer) any arrangements involving the use of offshore companies or other offshore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Customer under or pursuant to the Agreement ("**Prohibited Transaction**"). Prohibited Transactions shall not include transactions made between the Supplier and other Supplier Group Companies on terms which are at arm's length and are entered into in the ordinary course of the transacting parties' business.
- (b) Unless otherwise agreed with the Customer, the Supplier shall notify the Customer in writing (with reasonable supporting detail) of any proposal for the Supplier or any Supplier Group Company to enter into any Prohibited Transaction. The Supplier shall notify the Customer within a reasonable time to

allow the Customer to consider the proposed Prohibited Transaction before it is due to be put in place.

- (c) In the event of a Prohibited Transaction being entered into in breach of Clause 32.17(a) above, or in the event that circumstances arise which may result in such a breach, the Supplier shall discuss the situation with the Customer and, in order to ensure future compliance with the requirements of Clause 32.17, the Parties shall agree (at no cost to the Customer) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.
- (d) A failure by the Supplier to comply with the obligations set out in Clause 32.17(c) above shall entitle the Customer to terminate this Agreement pursuant to Clause 29.1(a)(vi) above.

### **32.18 Compliance with Value Added Tax and Other Tax Requirements**

- (a) The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes and duties.
- (b) A failure by the Supplier to comply with the obligations set out in Clause 32.18(a) above shall entitle the Customer to terminate the Agreement pursuant to Clause 29.1(a)(vi) above provided that:
  - (i) in the event of a breach of Clause 32.18(a) above, or in the event that circumstances arise which may result in such a breach, the Supplier shall be entitled to discuss the situation with the Customer and be given the opportunity to make representations to the Customer in the event that it believes itself not to be in breach of Clause 32.18(a);
  - (ii) the Customer shall not exercise its rights under this Clause 32.18 unless and until the Customer has followed its normal and reasonable procedures to collect such outstanding amounts from the Supplier, and the Parties acknowledge that such procedures may require the Customer to pursue its claims before the Special or General Commissioners or the VAT and Duties Tribunal but the Customer shall not be required to await the conclusion of appeals to courts or tribunals beyond such level before exercising its rights hereunder;
  - (iii) at least thirty (30) days before exercising the right of termination provided by this Clause 32.18 the Customer shall give notice in writing to the Supplier that it is intending to exercise the right of termination and the notice shall contain a description of the Value Added Tax or other tax or duty due from the Supplier, for example by reference to an assessed amount or by reference to supplies made during an accounting period during which period the Supplier has the opportunity to remedy its failure to comply with Clause 32.18(a) as such failure is set out in the aforementioned notice; and
  - (iv) the Customer shall not exercise its rights under this Clause 32.18 if, before so doing, the Supplier has remedied its failure to comply with the Value Added Tax Act 1994 and/or other statute relating to direct or indirect taxes and duties as such failure is set out in the notice given in

Clause 32.18(b)(iii).

- (c) The Supplier shall furnish to the Customer the name, and if applicable, the Value Added Tax registration number of any Subcontractor prior to the commencement of any work under this Agreement by that Subcontractor.

### **33 FINANCIAL DISTRESS**

The Parties shall comply with their respective obligations as set out in Schedule 11 (**Financial Distress**) throughout the Term.

### **34 COLLABORATION**

The Parties shall comply with their respective obligations as set out in Schedule 17 (**Collaboration**) throughout the Term.

**SIGNED by *Redacted***

For and on behalf of The Commissioners for Her Majesty's Revenue and Customs

**Chief Commercial Officer HMRC**\_\_\_\_\_

**SIGNED by *Redacted***

For and on behalf of Fujitsu Services Limited

**Duly Authorised Representative**\_\_\_\_\_

**SCHEDULE 1**  
**INTERPRETATION AND DEFINITIONS**

## SCHEDULE 1

### INTERPRETATION AND DEFINITIONS

#### 1. INTERPRETATION

Save to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2 all references to Clauses and Schedules are references to Clauses of and Schedules to this Agreement, and all references to Sections, paragraphs, Parts or Annexes are references to Sections, paragraphs and Parts contained in the Schedules and Annexes to the Schedules;
- 1.3 all references to any agreement (including this Agreement), document or other instrument include a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument);
- 1.4 without prejudice to the provisions in this Agreement relating to Changes in Law (and, in particular Discriminatory Changes in Law), all references to any statute or statutory provision (including any subordinate legislation) shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- 1.5 all references to time of day shall be a reference to whatever time of day shall be applicable in England and Wales;
- 1.6 words importing the singular include the plural and vice versa;
- 1.7 words importing a particular gender include all genders;
- 1.8 **"person"** includes any individual, partnership, firm, trust, body corporate, undertaking, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association;
- 1.9 any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation, or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative;
- 1.10 references to **"Parties"** mean the parties to this Agreement and their successors and assignees, and references to a **"Party"** mean one of the Parties to this Agreement, and its successors and assignees;

- 1.11 the word **"including"** when used in this Agreement shall mean **"including without limitation"**, and
- 1.12 references to items being in the "ownership" of the Customer shall be deemed to include items in the "ownership" of the Customer's predecessors.

## 2. **PRIORITY OF DOCUMENTS**

- 2.1 Subject to Section 2.2 below, the Schedules, Annexes and any other attachments expressly identified in the same or in the body of this Agreement form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules, Annexes and any such other attachments.

- 2.2 If and to the extent of any conflict or inconsistency:

- (a) between:

- (i) any provision of the Terms and Conditions together with Schedule 1 (**Interpretation and Definitions**); and

- (ii) any provision of the other Schedules,

the Terms and Conditions, together with Schedule 1 (**Interpretation and Definitions**), shall prevail; and

- (b) between

- (i) Annex 2-1 (**Technical Infrastructure**) of Schedule 2 (**Services**); and

- (ii) the other Annexures or Schedules,

the provisions of the other Annexures and Schedules shall prevail; and

- 2.3 If and to the extent only, of any conflict or inconsistency:

- (a) between:

- (i) the provisions of this Agreement; and

- (ii) the provisions of any document, other than those within the scope of Section 2.2 above, referred to or referenced herein,

the provisions of this Agreement shall prevail; and

- (b) between:

- (i) the provisions of this Agreement; and

- (ii) the provisions of any document agreed by the Parties or approved by the Customer subsequent to the date hereof (other than any



amendment or variation to this Agreement made in accordance with Clause 32.8 of the Terms and Conditions),

the provisions of this Agreement shall prevail; and

(c) between:

(i) the provisions of the Schedules; and

(ii) the provisions of the Annexes and any referenced documents,

the provisions of the Schedules shall prevail;

(d) between:

(i) the provisions of the Annexes, and

(ii) the provisions of any referenced documents,

the provisions of the Annexes shall prevail; and

(e) between:

(i) the Pricing File; and

(ii) the Charges,

the Charges shall prevail.

### 3. DEFINITIONS

|                                              |                                                                                                                                                                                                                                                                 |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Accreditation Process"</b>               | means the agreed process to achieve the security standards set out in Schedule 12 ( <b>Security</b> ).                                                                                                                                                          |
| <b>"Actual CHIEF GPLI"</b>                   | has the meaning given in Section 11.3 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                         |
| <b>"Additional Services"</b>                 | means the FM Services in relation to the NEP Premises, as set out in Section 2 (Additional Services) of Part B of Annex 15-5 to Schedule 15 ( <b>Accommodation</b> ).                                                                                           |
| <b>"Additional Storage"</b>                  | has the meaning given in Section 10.15 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                        |
| <b>"Affiliate"</b>                           | means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity.                                                                                                                                        |
| <b>"Affected Obligations"</b>                | has the meaning given in Section 7.2(b)(ii) of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                                                                  |
| <b>"Agile Project"</b>                       | Has the meaning given in Section 2.3 of Schedule 3 ( <b>Projects and Rate Based Services</b> )                                                                                                                                                                  |
| <b>"Agreement"</b>                           | means the Terms and Conditions and all Schedules, Annexes and appendices, together with any other documents expressly incorporated by reference.                                                                                                                |
| <b>"Alternative Dispute Resolution"</b>      | means the process set out in Section 5.16 of Schedule 8 ( <b>Governance</b> ).                                                                                                                                                                                  |
| <b>"Annex"</b>                               | means an annex to a Schedule.                                                                                                                                                                                                                                   |
| <b>"Applicable Person"</b>                   | has the meaning set out in Clause 27.1(a)(i) of the Terms and Conditions.                                                                                                                                                                                       |
| <b>"Application Functional Changes"</b>      | means changes to the code of an VME Applications intended to change the functionality of such Application;                                                                                                                                                      |
| <b>"Application Information List"</b>        | means the list of information in respect of the VME Applications, which shall be provided pursuant to Sections 4 and 6 of Annex 2-3 of Schedule 2 ( <b>Services</b> ).                                                                                          |
| <b>"Application Planning Process"</b>        | means the process to be undertaken by the Supplier by reference to, amongst other things, the information provided by the Customer pursuant to the Application Information List, in order for the Supplier to plan and implement the VPaaS Environment Refresh. |
| <b>"Application Services Service Levels"</b> | means the Service Levels in respect of the Application Services, as detailed in Annex 4-4 of Schedule 4 ( <b>Service Measurement</b> ) and the applicable Supplier Proposal.                                                                                    |

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Application Services"</b>                | has the meaning set out in Clause 5.1(a)(iv) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Application Services Charges"</b>        | means the charges payable by the Customer in respect of Application Services, in accordance with Section 13 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"Application Transformation"</b>          | <p>means:</p> <ul style="list-style-type: none"> <li>(a) the writing, by or behalf of the Customer, of new application code in replacement of the Customer's existing application code of a VME Application in circumstances where the new application code is lawfully written for a new application so that such new application operates on an operating system other than VME or MVE and/or not on the VPaaS Platform and is written without any use of the Supplier's Intellectual Property and or Confidential Information; and</li> <li>(b) the adoption of a replacement application independently created by the Customer or a third party without the use of the Supplier's Intellectual Property and/or Confidential Information in the writing of the new application.</li> </ul> <p>Application Transformation includes without limitation:</p> <ul style="list-style-type: none"> <li>(a) the development of new application code by the Customer, or a third party on its behalf, reviewing the Customer's VME Application's existing code, but without use of the Supplier's Intellectual Property Rights or the Supplier's Confidential Information; and</li> <li>(b) transformation of the functionality of the Customer's VME Application into a recognised third party analytics platform solution.</li> </ul> |
| <b>"Application Workload Transformation"</b> | has the meaning given in Section 2.2 of Appendix B to Schedule 2 ( <b>Services</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Appropriate Measures"</b>                | has the meaning given in Clause 22.1(q) (of the Terms and Conditions).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"ASN"</b>                                 | means anti-smuggling network.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"Assets"</b>                              | means the Equipment, Software, Material and Facilities used by the Supplier during the Term to provide the Services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Audit"</b>                               | <p>means the conduct by Customer Audit Representatives and/or any regulators of an audit or inspection of:</p> <ul style="list-style-type: none"> <li>(a) any facility or part of a Facility at which either the Supplier is providing the Services; and/or</li> <li>(b) data, records and information relating to the Services.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

|                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Audit Memorandum of Understanding"</b>         | has the meaning set out in Section 5.2 of Schedule 10 ( <b>Audit Access</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>"Availability"</b>                              | has the meaning given in the method of calculation for a relevant Service Level in Schedule 4 ( <b>Service Measurement</b> ) and is calculated by reference to whether something for which the Supplier is responsible is available or unavailable and, unless otherwise stated, disregarding any lack of availability from other causes. In the case of the availability of a VPaaS Service the system is available when the master operator console is available such that applications using the system can be loaded. <b>"Available"</b> , <b>"Unavailable"</b> and Unavailability shall be construed accordingly. |
| <b>"Background IPRs"</b>                           | has the meaning set out in Clause 12.1 of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Basic Check"</b>                               | means the level of assurance as to the trustworthiness and integrity of individuals, derived by applying the appropriate procedures set out in the Manual of Protective Security.                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"BAU Obligation"</b>                            | means any obligation of the Supplier under this Agreement which relates to and affects the delivery of the Shared Services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"BAU Obligation Change"</b>                     | means any BAU Obligation in respect of which the Customer has requested a change to the way in which the Supplier delivers the affected Shared Services, and as this is agreed by the Parties pursuant to the BAU Obligation Process.                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"BAU Obligation Process"</b>                    | has the meaning given in Section 7.1 of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"Business Application"</b>                      | means a Software application that supports a business process or function.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Business Case"</b>                             | means the Supplier's proposal, in a format to be agreed with the Customer, highlighting the financial and non-financial benefits of a proposed change to Customer Accommodation (including such other information as the Customer may reasonably require or as may be agreed between the Parties in accordance with Schedule 15 ( <b>Accommodation</b> )) for the purpose of incorporating such proposed change in Customer Accommodation. A template form of Business Case is set out at Exhibit 15-1 of Annex 15-4 of Schedule 15 ( <b>Accommodation</b> ).                                                          |
| <b>"Business Continuity and Disaster Recovery"</b> | means the Supplier's obligations in respect of assisting the Customer with the Customer's business continuity and disaster recovery requirements, as set out in Schedule 2 ( <b>Services</b> ) and Schedule 4 ( <b>Service Measurement</b> ). For clarity, the Supplier shall only be responsible for such obligations as set out in those Schedules and the Customer agrees that it has primary responsibility for business continuity and disaster recovery in                                                                                                                                                       |

|                                                        |                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        | respect of the continued operation of the VME Applications using the VPaaS Services.                                                                                                                                                                                                                                           |
| <b>"Business Continuity Manager"</b>                   | means such person as shall be appointed by the Supplier pursuant to Section 8 of Schedule 15 ( <b>Accommodation</b> ) from time to time for the purposes of providing the services set out in Section 8 to Schedule 15 ( <b>Accommodation</b> ) in respect of Customer Accommodation.                                          |
| <b>"C&amp;AG" or "Comptroller and Auditor General"</b> | has the meaning set out in Section 6.1 of Schedule 10 ( <b>Audit Access</b> ).                                                                                                                                                                                                                                                 |
| <b>"Capacity Variance Notice"</b>                      | Is the means for the Customer and the Supplier to manage the need for additional approval for Supplier resources for Agile Projects. The Capacity Variance Notice will be used where the Supplier does not have sufficient approval to develop the product backlog during the agreed timescales using the resources available. |
| <b>"CCN"</b>                                           | means a change control note in the form set out in Annex 7-2 of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                                                                                                                |
| <b>"CCN FS610"</b>                                     | means the change control notice agreed by the Parties under the Prime Agreement with reference "CCN FS610".                                                                                                                                                                                                                    |
| <b>"CEL Index"</b>                                     | means the CEL Index published as part of XperthR's Technology Salary Survey by Reed Business Information Limited trading as XperthR.                                                                                                                                                                                           |
| <b>"Changes"</b>                                       | has the meaning set out in Section 1.1 of Schedule 7 ( <b>Change Control Procedure</b> ) and " <b>Change</b> " shall be construed accordingly.                                                                                                                                                                                 |
| <b>"Change Control Procedure"</b>                      | means the process for changing the Services and this Agreement which is set out in Schedule 7 ( <b>Change Control Procedure</b> ), in particular Section 4 of that Schedule.                                                                                                                                                   |
| <b>"Change in Law"</b>                                 | means the coming into effect, after the Effective Date, of any Law.                                                                                                                                                                                                                                                            |
| <b>"Change of Control"</b>                             | means that Control of the Supplier is acquired by any entity (other than a Supplier Group Company) by way of either a single transaction or a series of related transactions.                                                                                                                                                  |
| <b>"Change Request"</b>                                | means a formal written request to change an element of a Project or the Services submitted by one Party to the other under this Agreement.                                                                                                                                                                                     |
| <b>"CHIEF Additional Storage"</b>                      | has the meaning given in Section 11.11 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                       |
| <b>"CHIEF Additional Storage Charges"</b>              | means those charges for CHIEF Additional Storage payable in accordance with Section 11.10 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                    |

|                                          |                                                                                                                                                                                                                                                                                                |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"CHIEF Application"</b>               | means the Customer's CHIEF Business Application, including CHIEF IES System.                                                                                                                                                                                                                   |
| <b>"CHIEF Decommissioning Services"</b>  | has the meaning given in Section 7.7(b) of Part 3 of Schedule 2 ( <b>Services</b> ).                                                                                                                                                                                                           |
| <b>"CHIEF Excess GPLI Charge"</b>        | Has the meaning given to it in Section 11.4 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                  |
| <b>"CHIEF IES System" or "IES"</b>       | means the import and export element of the CHIEF Application.                                                                                                                                                                                                                                  |
| <b>"CHIEF Minority Boxes"</b>            | means the following CHIEF servers which form part of the CHIEF IES System infrastructure:<br>(a) the Vados servers; and<br>(b) those servers whose current server operating system is Windows Server 2008.                                                                                     |
| <b>"CHIEF OCP Constraints"</b>           | means the constraints resulting from the OCP Usage Limit on the CHIEF Technical Infrastructure, the Availability of that CHIEF Technical Infrastructure in accordance with Schedule 4 ( <b>Service Measurement</b> ), and the CHIEF workload that can be processed within the OCP Usage Limit. |
| <b>"CHIEF Service Management Manual"</b> | means the full set of service management documentation required to be maintained by the Customer to allow for the on-going management and delivery of the CHIEF VPaaS Services in accordance with the requirements of this Agreement.                                                          |
| <b>"CHIEF Storage Baseline"</b>          | has the meaning given in Section 11.10 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                       |
| <b>"CHIEF Technical Infrastructure"</b>  | means the Technical Infrastructure used by the Supplier to provide the CHIEF VPaaS Services.                                                                                                                                                                                                   |
| <b>"CHIEF VPaaS Charging Assumption"</b> | has the meaning given in Section 11.7 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                        |
| <b>"CHIEF VPaaS Services"</b>            | has the meaning set out in Clause 5.1(a)(ii) of the Terms and Conditions.                                                                                                                                                                                                                      |
| <b>"CHIEF VPaaS Services Charges"</b>    | means the charges payable by the Supplier for the Prime VPaaS Services, in accordance with Section 11 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                        |
| <b>"CHIEF VPaaS Service Levels"</b>      | means the Service Levels in respect of the CHIEF VPaaS Services, as detailed in Annex 4-1 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                        |
| <b>"CHIEF User"</b>                      | means a person or Trader authorised by the Customer to use the CHIEF Service.                                                                                                                                                                                                                  |

|                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Claim"</b>                                 | means any claim, demand, proceeding, suit or other action.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Clone"</b>                                 | means a test environment where server components are installed in a configuration that is a clone of the live environment. It comprises agreed hardware, software and data (either live volumes or alternatives as agreed between the Parties) which as far as practicable emulate the live environment.                                                                                                                                                                                                                                          |
| <b>"Commercial Impact Procedure"</b>           | means the process whereby the Parties shall determine the amount by which Changes are chargeable by the Supplier, as set out in Section 4.2 of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Commercially Reasonable Efforts"</b>       | means taking such steps and performing them in such a way as a well-managed organisation would undertake with the aim of achieving a particular desired result for its own benefit, assuming such organisation was acting in a commercial, prudent and reasonable manner.                                                                                                                                                                                                                                                                         |
| <b>"Commercially Sensitive Information"</b>    | <p>the information redacted in the agreed redacted version of the Agreement and any other information of a commercially sensitive nature relating to;</p> <ul style="list-style-type: none"> <li>(a) the pricing of the Services;</li> <li>(b) the details of the Supplier's IPRs; and</li> <li>(c) the Supplier's business and investment plans,</li> </ul> <p>which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;</p> |
| <b>"Complete By Dates"</b>                     | has the meaning set out in Clause 6.6(a) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Compliance Requirements Specification"</b> | has the meaning given in Section 2.4(e)(iii) of Appendix B of Schedule 2 ( <b>Services</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Comptroller and Auditor General"</b>       | see <b>"C&amp;AG"</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Confidential"</b>                          | means, where used in relation to protective marking, a classification of such marking as described in the "Manual of Protective Security" published by the Cabinet Office.                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Confidential Information"</b>              | means all information, whether commercial, financial, technical or otherwise, whether or not disclosed by one Party to the other Party, which information may be contained in or discernible from any form whatsoever (including oral, documentary, magnetic, electronic, graphic or digitised form or by demonstration or observation), whether or not that information is marked or designated as confidential or proprietary, and all matters arising                                                                                          |

prior to or during the Term including information belonging to or in respect of the Supplier, its Subcontractors, the Customer (including the former Inland Revenue and former HMCE), Services Recipients (as appropriate) and/or any of their customers or suppliers, which relates to research, development, trade secrets, know-how, ideas, concepts, formulae, processes, designs, specifications, past, present and prospective business, current and future products and services, Customer Data, internal management, information technology and infrastructure and requirements, finances, marketing plans and techniques, price lists and lists of, and information about, customers and employees, and all materials and information belonging to third parties in respect of which the Parties or any of their customers or suppliers owe obligations of confidence, provided that the Reports shall not be considered to be the Supplier's Confidential Information.

|                                           |                                                                                                                                                                                                                                                                               |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Contingent Change"</b>                | means a Change under the Prime Agreement (as such term is defined therein), arising as a result of a Shared Services Amendment under this Agreement.                                                                                                                          |
| <b>"Contract Management Team"</b>         | means the team of Customer staff that is designated by the Customer to manage this Agreement for the Customer during the Term, or the team of Supplier Personnel that is designated by the Supplier to manage this Agreement for the Supplier during the Term, as applicable. |
| <b>"Contract Year"</b>                    | means the period commencing on, and including, the Effective Date and ending on the anniversary of the Effective Date, and each immediately successive period of twelve (12) months.                                                                                          |
| <b>"Contracting Authority"</b>            | means a contracting authority as defined in the Public Services Contracts Regulations 2015.                                                                                                                                                                                   |
| <b>"Control"</b>                          | and its derivatives shall have the meaning given in Section 416 of the Income and Corporation Taxes Act 1988.                                                                                                                                                                 |
| <b>"Controller"</b>                       | has the meaning given in the Relevant Data Protection Laws.                                                                                                                                                                                                                   |
| <b>"Counter Notice"</b>                   | has the meaning given in Clause 31.5(b) of the Terms and Conditions.                                                                                                                                                                                                          |
| <b>"Counter Terrorist Check" or "CTC"</b> | means the level of assurance as to the trustworthiness and integrity of individuals, derived by applying the appropriate procedures set out in the Manual of Protective Security.                                                                                             |
| <b>"Current Data Centres"</b>             | has the meaning given in Clause 10.3(a) of the Terms and Conditions.                                                                                                                                                                                                          |
| <b>"Customer Accommodation"</b>           | means the customer owned or operated premises made available to the Supplier in order to provide the Services, as set out in Annex 15-1a of Schedule 15 ( <b>Accommodation</b> ).                                                                                             |



|                                                  |                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Customer Accommodation Vacation Impact"</b>  | has the meaning given in Section 1.6(d) of Schedule 15 ( <b>Accommodation</b> ).                                                                                                                                                                                                                                                                                                                         |
| <b>"Customer Applications"</b>                   | has the meaning given in Clause 12.9(a) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                     |
| <b>"Customer Assets"</b>                         | means any assets owned or operated by the Customer and which are made available to the Supplier in connection with this Agreement.                                                                                                                                                                                                                                                                       |
| <b>"Customer Audit Representative"</b>           | means any representative or employee of the Customer, including the IAO and the DSU, or any third party appointed by the Customer to conduct an audit on its behalf.                                                                                                                                                                                                                                     |
| <b>"Customer Contract Manager"</b>               | means such individual as the Customer shall nominate, from time to time, to manage and control the relationship with the Supplier.                                                                                                                                                                                                                                                                       |
| <b>"Customer Data"</b>                           | means all data and written information relating to the Customer, Services Recipients and/or any other Government Department which is provided to or created by or on behalf of the Supplier in the course of providing the Services, including data or information about any of their operations, facilities, personnel, assets, products, programs, and the Services, but excluding HMRC Customer Data. |
| <b>"Customer Data Protection Representative"</b> | means an individual or individuals nominated by the Customer from time to time to review and manage data protection in relation to this Agreement in accordance with Clause 22.1(o) of the Terms and Conditions.                                                                                                                                                                                         |
| <b>"Customer Dependencies"</b>                   | means the Customer obligations listed in Annex 2-3 to Schedule 2 ( <b>Services</b> ) and any other dependencies on the Customer expressly stated as such in this Agreement.                                                                                                                                                                                                                              |
| <b>"Customer's Internet Site Privacy Policy"</b> | means the Customer's internet site privacy policy (as amended from time to time).                                                                                                                                                                                                                                                                                                                        |
| <b>"Customer Material"</b>                       | means any Material, the Intellectual Property Rights in which are owned by the Customer or any other Government Department, which is used in conjunction with the Services, and shall include all Modification to such Material.                                                                                                                                                                         |
| <b>"Customer Proposed Determination"</b>         | has the meaning given in Section 5.15(a) of Schedule 8 ( <b>Governance</b> ).                                                                                                                                                                                                                                                                                                                            |
| <b>"Customer Report"</b>                         | any document, format of data or information update (whether electronic or paper) to be provided to the Supplier by the Customer from time to time, on a regular or ad-hoc basis, for the purposes of reporting in connection with the provision of the                                                                                                                                                   |

|                                                      |                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                      | Services, including the reports listed in Annex 9-1 of Schedule 9 ( <b>Reporting</b> ).                                                                                                                                                                                                                                                                       |
| <b>"Customer's Security Risk Assessment Process"</b> | means the process by which the Customer assesses and acknowledges risks to a system or to the Services.                                                                                                                                                                                                                                                       |
| <b>"Customer Software"</b>                           | means any Software, the Intellectual Property Rights in which are owned by the Customer, any Services Recipient or any other Government Department or agency, which is used in conjunction with the Services, and shall include all Modifications to such Software.                                                                                           |
| <b>"Customer Third Party Contracts"</b>              | means any third party agreements entered into by the Customer with third parties (either directly or via the Supplier) including those which are set out in Schedule 2 Annex 2.4 ( <b>Customer Third Party Contracts and Licences</b> ) which relate to the provision of any part of the Services other than Modernisation Services and Application Services. |
| <b>"Customer Third Party Software"</b>               | means the Third Party Software which is licensed to the Customer by third parties, and which includes such Software licensed pursuant to the Customer Third Party Contracts, and all Modifications to such Software.                                                                                                                                          |
| <b>"Customer Vacation Notice"</b>                    | has the meaning given in Section 1.6(a) of Schedule 15 ( <b>Accommodation</b> ).                                                                                                                                                                                                                                                                              |
| <b>"Data Centre"</b>                                 | means Facilities or other premises housing the Technical Infrastructure and associated infrastructure.                                                                                                                                                                                                                                                        |
| <b>"Data Guardian"</b>                               | means such individual that the Customer confirms to the Supplier in writing as having authority for Customer Data and HMRC Customer Data.                                                                                                                                                                                                                     |
| <b>"Data Protection Impact Assessment"</b>           | means an assessment by the Controller of the impact of the processing on the protection of Personal Data.                                                                                                                                                                                                                                                     |
| <b>"Data Protection Officer"</b>                     | has the meaning given in the Relevant Data Protection Laws.                                                                                                                                                                                                                                                                                                   |
| <b>"Data Protection Representatives"</b>             | has the meaning given in Clause 22.1(o) (Protection of Personal Data) of the Terms and Conditions.                                                                                                                                                                                                                                                            |
| <b>"Data Subject"</b>                                | has the meaning given in the Relevant Data Protection Laws;                                                                                                                                                                                                                                                                                                   |
| <b>"Data Subject Access Request"</b>                 | a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data.                                                                                                                                                                                                          |
| <b>"De Minimis Shared Change"</b>                    | has the meaning given in Section 6.6(a)(i) of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                                                                                                                                                                 |

**"Declaration"**

means a single declaration processed by the CHIEF Application, including the types listed below and any other types agreed by the Parties from time to time:

- (a) Import transactions:
  - (i) E/IIFD – Insert Import Frontier Declaration
  - (ii) E/IIFW – Insert Import Full Warehouse
  - (iii) E/IISD – Insert Import Supplementary Declaration
  - (iv) E/IISW – Insert Import Supplementary Warehouse
  - (v) E/IICR – Insert Import Clearance Request
  - (vi) SFD - Simplified Frontier Declarations
- (b) Export transactions:
  - (i) E/IECR – Insert Import Clearance Request
  - (ii) E/IELP – Insert Export LCP Pre-Shipment
  - (iii) E/IESP – Insert Export SDP Pre-shipment
  - (iv) E/IEFD – Insert Export Frontier Declaration
  - (v) E/IESD – Insert Export Supplementary Declaration
  - (vi) E/IEXS – Insert Export Exit Summary Declaration.

**"Declarations Assumption"**

means the assumption as to the number of Declarations per GPLI Charge Year, as set out in Table 1.3 in Schedule 5 (**Charges**).

**"Deeds of Termination and Variation"**

means:

- (a) the deed of partial termination and variation in respect of the Prime Agreement; and
- (b) the deed of termination in respect of the CHIEF Agreement,

both as agreed and executed and delivered by the Parties.

**"Default"**

means, in relation to either Party (including its employees, agents and subcontractors), any breach of the obligations of that Party (including fundamental breach or breach of a fundamental term) or failure by that Party to perform such an obligation or any negligent or criminal act or omission of that Party, in connection with or in relation to the subject-matter of this Agreement.

**"Delivery Phase"**

means the phase in a Project where functionality is iteratively developed and tested and may be implemented.

**"Delivery Proposal"**

has the meaning given in Section 3.5 of Schedule 3 (**Projects and Rate Based Services**).

|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Departmental IT Security Officer"</b> | means the officer appointed by the Customer and responsible for departmental IT security affairs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"Developed Vetting"</b>                | means the level of security vetting clearance that the Manual of Protective Security defines as Developed Vetting.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Development"</b>                      | means production of new Business Applications and includes activities in the system lifecycle associated with Business Applications Development and Enhancement business applications development and enhancement for the "Other Systems Development and Enhancement" Work Type.                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Discontinued Prime Services"</b>      | has the meaning given in Clause 4.4(b) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Discount Dependencies"</b>            | has the meaning given in Section 10.10 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Discovery Phase"</b>                  | means the phase of Project where a joint team consisting of all relevant Parties gain a high level understanding of user needs and the undertaking of initial scoping and understanding of the proposed Project.                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Discovery Proposal"</b>               | has the meaning given in Section 3.4 of Schedule 3 ( <b>Projects and Rate Based Services</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Discriminatory Change in Law"</b>     | <p>means a Change in Law, the terms of which:</p> <ul style="list-style-type: none"> <li>(a) apply: <ul style="list-style-type: none"> <li>(i) expressly to the Customer or to a Services Recipient; or</li> <li>(ii) specifically to the provision of outsourced technology services to the UK government and not to other UK customers of the Supplier; or</li> <li>(iii) specifically to the provision of the Services by the Supplier under this Agreement; or</li> </ul> </li> <li>(b) results in a need (or, in the case of the Customer, a desire) to change the Services in order to comply with Clause 26.4 of the Terms and Conditions.</li> </ul> |
| <b>"Downtime"</b>                         | means the total time (hours and minutes) that the service was not Available in the calendar month within the Measured Scheduled Hours (calculated from the reported incidents of Downtime) excluding any Planned Downtime.                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"Early Warning"</b>                    | has the meaning given in Clause 16.2(a) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|                                   |                                                                                                                                                                                                      |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Effective Date"</b>           | has the meaning given in Clause <b>Error! Reference source not found.</b> on which date this Agreement comes into full force and effect                                                              |
| <b>"EIR"</b>                      | has the meaning given in Clause 22.2(a) of the Terms and Conditions.                                                                                                                                 |
| <b>"End-User" or "User"</b>       | means users of the Services, including employees of the Customer and Services Recipients but excluding HMRC Customers.                                                                               |
| <b>"Enhancement"</b>              | means changes that are made to existing Business Applications.                                                                                                                                       |
| <b>"Environment"</b>              | means an environment for running applications, provided by an Operating System Instance.                                                                                                             |
| <b>"Equipment"</b>                | means the equipment (including computer hardware), and any associated peripherals and connecting equipment, either owned or leased by the Supplier and used in the provision of any of the Services. |
| <b>"Escalation Process"</b>       | means the escalation and dispute resolution process set out in Schedule 8 ( <b>Governance</b> ).                                                                                                     |
| <b>"Estate"</b>                   | means the estate on which the NEP Premises are situated.                                                                                                                                             |
| <b>"European Standard"</b>        | has the meaning given in Section 1.1(a) of Schedule 6 ( <b>Invoicing</b> ).                                                                                                                          |
| <b>"Excess GPLI Charge"</b>       | has the meaning set out in Section 10.7 of Schedule 5 ( <b>Charges</b> ).                                                                                                                            |
| <b>"Excess GPLI Rate"</b>         | is set out in Table 1.1. of Schedule 5 ( <b>Charges</b> ).                                                                                                                                           |
| <b>"Exclusions"</b>               | means the exclusions listed in Section 8 of Part 4 of Schedule 2 ( <b>Services</b> ).]                                                                                                               |
| <b>"Facilities" or "Facility"</b> | means any office space, furnishings, fixtures and/or services.                                                                                                                                       |
| <b>"Failure Severity Level"</b>   | Has the meaning given in Section 2.2(a) of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                |
| <b>"Final Supplier Proposal"</b>  | has the meaning given in Section 3.13 of Schedule 3 ( <b>Projects and Rate Based Services</b> ).                                                                                                     |
| <b>"Financial Year" or "FY"</b>   | means the period from 1 April to 31 March inclusive (for example "FY 2020/21" means 1 April 2020 to 31 March 2021 inclusive, "FY 2023/24" means 1 April 2023 to 31 March 2024, etc.).                |
| <b><i>Redacted</i></b>            |                                                                                                                                                                                                      |
| <b>"FM Notice"</b>                | has the meaning set out in Clause 16.3(d)(ii) of the Terms and Conditions.                                                                                                                           |

|                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"FM Services"</b>                                      | means the facilities management services to be provided by or on behalf of the Customer in respect of Customer Accommodation, as further described in Schedule 15 ( <b>Accommodation</b> ) but excluding the exceptions listed in Annex 15-5 (Part B) of the same Schedule.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"FM Services Contractor"</b>                           | means, in relation to STEPS Premises, Mapeley, and in relation to NEP Premises, NEP, or in either case any alternative accommodation services provider appointed by the Customer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"FOIA"</b>                                             | has the meaning given in Clause 22.2(a) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"FOIA Disclosure Related Confidential Information"</b> | has the meaning given in Clause 22.2(k) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"Force Majeure"</b>                                    | <p>means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any willful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Subcontractor's supply chain. Force Majeure also includes:</p> <ul style="list-style-type: none"><li>(c) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, civil commotions;</li><li>(d) failure by any statutory undertaking, utility company, local authority or other like body to carry out works or provide services;</li><li>(e) any accidental loss or damage to facilities used to perform the Services;</li><li>(f) any national failure or shortage of power, fuel or transport;</li><li>(g) any blockade or embargo; and</li><li>(h) any:<ul style="list-style-type: none"><li>(i) official or unofficial strike;</li><li>(ii) lockout; or</li><li>(iii) go slow, or other dispute,</li></ul></li></ul> |

generally affecting the information technology sector (but excluding such events targeted specifically at any Subcontractor or the Supplier).

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Force Majeure Event"</b>            | means an event of Force Majeure.                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Forward Schedule of Change"</b>     | means a written schedule showing summary contents and dates of Releases, changes, business events and planned maintenance affecting the live environment over a period of time in the future.                                                                                                                                                                                                                                                                        |
| <b>"Freeze Period"</b>                  | has the meaning given in Section 3.1(h) of Annex 2-3 of Schedule 2 ( <b>Services</b> ).                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"FTE"</b>                            | means full time equivalent.                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Fujitsu" or "Fujitsu Services"</b>  | means Fujitsu Services Limited (as defined in the Terms and Conditions) or its relevant affiliate.                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"Full Approval Certificate"</b>      | means a certificate materially in the form of the document contained in Annex 3-4 of Schedule 3 ( <b>Projects and Rate Based Services</b> ) issued by the Customer in respect of a Final Supplier Proposal in accordance with Section 5.3 of Schedule 3 ( <b>Projects and Rate Based Services</b> ).                                                                                                                                                                 |
| <b>"Furniture and Office Equipment"</b> | has the meaning given in Section 2.3(b) of Schedule 15 ( <b>Accommodation</b> ).                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"GDPR"</b>                           | means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data being enforced in the EU from 25 May 2018 (repealing Directive 95/46/EC), along with regulatory codes of practice or codes of conduct, regulatory guidance and standard clauses and other related or equivalent domestic legislation, as updated from time to time.     |
| <b>"GDPR Change"</b>                    | has the meaning given in Clause 22.1(p)(ii)(B)1) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"GDPR Suspension"</b>                | has the meaning given in Clause 22.1(p)(ii)(B) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Good Industry Practice"</b>         | means, at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced provider of information, communication and technology services and information systems similar to the services provided in connection with the provision of the Services seeking in good faith to comply with its contractual obligations and complying with relevant Law. |
| <b>"Governance Principles"</b>          | has the meaning set out in Section 2.1 of Schedule 8 ( <b>Governance</b> ).                                                                                                                                                                                                                                                                                                                                                                                          |

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Government Departments"</b>      | means any UK Government department and/or agency authorised to perform or procure any goods or services on behalf of the UK Government.                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"GPLI"</b>                        | means giga primitive level instructions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"GPLI Charge Years"</b>           | means the GPLI charge years set out in Tables 1.1, 1.2 and 1.3 in Schedule 5 ( <b>Charges</b> ) and in respect of each GPLI Charge Year means each period of time commencing on 1 July and ending on 30 June, and the GPLI Charge Year 1 shall be the period commencing on 1 July 2020 and ending on 30 June 2021, with each subsequent GPLI Charge Year continuing thereafter during the Term.                                                                                                                                                                     |
| <b>"GPLI Commitment"</b>             | has the meaning given to it in Section GPLIU of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"GPLI Commitment Expiry Date"</b> | has the meaning given to it in Section 10.12 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"Committed Floor Charge"</b>      | is set out in Table 1.1 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Committed Floor (GPLI)"</b>      | is set out in Table 1.1 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Guarantee"</b>                   | means a guarantee put in place pursuant to Clause <b>Error! Reference source not found.</b> of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"Guarantor"</b>                   | means the entity proposed as a signatory of the Guarantee.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"HMCE"</b>                        | means HM Customs and Excise, being the former Government department with responsibility for collecting VAT, other taxes and customs duties, which has been now been superseded by the Customer.                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"HMRC Customer"</b>               | means any identifiable person about whom the Customer or a Services Recipient holds or processes data in the context of their tax affairs, their status as a taxpayer (or payer of other duties) or recipient of tax credits, or in relation to the payment or calculation of any tax or duties or national insurance or the calculation or entitlement to any benefit (including pensions benefits) or tax credit.                                                                                                                                                 |
| <b>"HMRC Customer Data"</b>          | means information about any HMRC Customer, including information about any matter relevant to tax or duties or tax credit (including data relating to the payment or calculation of any tax or duties or national insurance, or the calculation or entitlement to any benefit or tax credit) in the case of any identifiable person, or any information capable of identifying any such person together with all other information protected by Section 182 of the Finance Act 1989, Section 18 of the Commissioners for Revenue and Customs Act 2005, Section 6 of |



|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                             | the Taxes Management Act 1970 and/or Section 123 of the Social Security Administration Act 1992.                                                                                                                                                                                                                                                                                                                     |
| <b>"IAO"</b>                                | means the Customer's Internal Audit Office.                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Impact Analysis"</b>                    | has the meaning set out in Section 4.3 of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                                                                                                                                                                                                                            |
| <b>"Impacted Customer Accommodation"</b>    | has the meaning set out in Section 1.6(a)(i) of Schedule 15 ( <b>Accommodation</b> ).                                                                                                                                                                                                                                                                                                                                |
| <b>"Implementation"</b>                     | means the way in which an information system is built and integrated into live service.                                                                                                                                                                                                                                                                                                                              |
| <b>"IMS"</b>                                | means a business unit within the Customer responsible for information management solutions.                                                                                                                                                                                                                                                                                                                          |
| <b>"Incident"</b>                           | means an unplanned interruption to the provision of something for which the Supplier is responsible or a material quality reduction to the same.                                                                                                                                                                                                                                                                     |
| <b>"Incident Reports"</b>                   | has the meaning given in Section 2.9(b) of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                                                                                                                |
| <b>"Incident Resolution"</b>                | means that the impact of an Incident has been ended or sufficiently mitigated to allow the resumption of the provision of the relevant one of the VPaaS Services which gave rise to the Incident and or the ending of the material quality reduction to the same. Such resolution may be a temporary workaround or a permanent repair or replacement of the thing giving rise to the Incident.                       |
| <b>"Indemnified Claim"</b>                  | has the meaning set out in Clause 27.5(a) of the Agreement.                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Indemnified Party"</b>                  | has the meaning set out in Clause 27.5(a) of the Agreement.                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Indemnifying Party"</b>                 | has the meaning set out in Clause 27.5(a) of the Agreement.                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Initial Supplier Proposal" or "ISP"</b> | means the document by that name produced by the Supplier for approval by the Customer setting out the initial view of the parameters for a proposed Project, including in particular the proposed commercial treatment of a Project and proposed basis of charging for that Project. An outline of the content of this document is contained in Annex 3-5 of Schedule 3 ( <b>Projects and Rate Based Services</b> ). |
| <b>"Inland Revenue"</b>                     | means the Commissioners of the Inland Revenue, being the former Government department with responsibility for collecting income tax, capital gains tax and other taxes which now forms part of the Customer.                                                                                                                                                                                                         |

**"Insolvency Event"**

means the occurrence of any act or event of insolvency or corporate action, legal proceedings or other procedural step taken in respect of the Supplier, including:

- (a) any meeting of creditors of the Supplier being convened or held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being proposed or entered into by or in relation to the Supplier or any application for an interim order (including an interim administration order) or moratorium being made;
- (b) a liquidator, provisional liquidator, supervisor, receiver, administrator, administrative receiver or person with similar powers taking possession of or being appointed over, or any distress, attachment, sequestration, execution or other process being levied or enforced (and not being discharged within twenty-eight (28) days) upon the whole or any substantial part of the assets of the Supplier (other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Customer (such approval not to be unreasonably withheld or delayed), with the resulting entity assuming all the obligations of the Supplier);
- (c) the Supplier ceasing or threatening to cease to carry on business, or admitting in writing its inability to pay or being or becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or suspending or threatening to suspend payment with respect to all or any class of its debts, or becoming insolvent or commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (d) a petition being presented and (other than in the case of an administration petition) not being dismissed within twenty-eight (28) days of presentation thereof, or a meeting being convened for the purpose of considering a resolution or the winding-up or dissolution of the Supplier (other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Customer (such approval not to be unreasonably withheld or delayed) with the resulting entity assuming all the obligations of the party in question);
- (e) the enforcement of a Security Interest (including the holder of a qualifying floating charge giving a notice of intention to appoint an administrator or filing a notice of appointment with the court) over any assets of that person;

- (f) to the extent that such an act is not specified in subparagraphs (a) to (e) above, any legal process or proceeding which is instituted in relation to that person in connection with the insolvency of that person or the inability of that person to pay its debts as they fall due, provided that such process or proceeding is of equivalent or greater seriousness to the acts of insolvency so specified in paragraphs (a) to (e) above; or
- (g) if the Supplier suffers any event analogous to any of the foregoing in any jurisdiction to which the Supplier is incorporated or resident or subject (including a filing under Chapter 11 or 12 of the US Bankruptcy Code).

**"Intellectual Property Rights"**

means patents (including patent applications), registered designs, trade marks and service marks (whether registered or otherwise), copyright, database rights, design rights, moral rights and other intellectual property rights, including in other jurisdictions that grant similar rights as the foregoing) including those rights subsisting in inventions, drawings, performances, software, semiconductor topographies, improvements, discussions, business names, goodwill and the style of presentation of goods or services, and in the applications for the protection thereof throughout the world.

**"Interim Approval Certificate"**

means a certificate materially in the form of the document contained in Annex 3-3 of Schedule 3 (**Projects and Rate Based Services**) issued by the Customer in respect of a Supplier Proposal in accordance with Section 4 of Schedule 3 (**Projects and Rate Based Services**).

**"Irrecoverable VAT"**

means input VAT incurred by the Supplier on any supply which is made to the Supplier used, or is to be used, in the Supplier's provision of the Services to the extent that the Supplier is not entitled to any repayment or credit from HMRC in respect of such input VAT as a result of change in VAT Law whereby the provision of services in provision of the Services, or any part thereof, becomes exempt for VAT purposes.

**"Issue Statement"**

has the meaning given in Section 5.7 of Schedule 8 (**Governance**).

**"IT Estate"**

means Customer Accommodation facilities provided by the Customer or any third party on behalf of the Customer for use in the provision of the Services.

**"IT Estate Accommodation Business Continuity Manager"**

means such person as shall be appointed by the Customer pursuant to Section 8 of Schedule 15 (**Accommodation**) from time to time for the purposes of providing the services set out in Section 8 to Schedule 15 (**Accommodation**) in respect of Customer Accommodation.

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Key Business Event" or "KBE"</b>         | means a business critical, public facing Customer business process or event as described at Section 2.12 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Key Customer Positions"</b>              | means the positions set out in Part II of Annex 15-1 of Schedule 14 ( <b>Employees and Subcontractors</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>"Key Performance Indicators" or "KPI"</b> | means a measure of performance for the Prime VPaaS Services as set out in Annex 4-2 of Schedule 4 ( <b>Services Measurement</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"Key Subcontractor"</b>                   | means any Subcontractor: <ul style="list-style-type: none"> <li>(a) which, in the reasonable opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</li> <li>(b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Agreement.</li> </ul>                                                                                                                                                                                                                                                                                                                         |
| <b>"Key Supplier Positions"</b>              | means the positions set out in Part I of Annex 14-1 of Schedule 14 ( <b>Employees and Subcontractors</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Known Error"</b>                         | means a Problem that becomes a Known Error when the root cause is known and a temporary workaround or a permanent alternative has been identified.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"Law"</b>                                 | means: <ul style="list-style-type: none"> <li>(a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time to which a Party is subject;</li> <li>(b) the common law and the law of equity as applicable to the Parties from time to time;</li> <li>(c) any binding court order, judgment or decree;</li> <li>(d) any applicable industry code, policy or standard enforceable by law; or</li> <li>(e) any applicable direction, policy, rule or order that is binding on a Party and that is made or given by any competent regulatory body having jurisdiction over a Party or any of that Party's assets, resources or business,</li> </ul> in any jurisdiction that is applicable to this Agreement, and <b>"Legal"</b> shall be interpreted accordingly. |
| <b>"Liquidated Damages"</b>                  | means the amounts payable by the Supplier to the Customer in respect of a Project Delay as specified in the relevant Project Plan.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Live on MVE"</b>                   | means that all environments (including development (sysc test) and live (run time)) are capable of being live in respect of the applicable VME Application.                                                                                                                                                                                                                                                                                                              |
| <b>"Loss"</b>                          | means all directly incurred losses, liabilities, damages, awards, orders, decisions and Claims and all related costs, expenses and payments made to third parties (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).                                                                                                                                                              |
| <b>"LSAP"</b>                          | means the "Live Service Access Procedure" which is the procedure documented and agreed by the Parties. LSAP sets out the procedure allowing certain Customer staff to access the live environment in connection with certain management and monitoring activities.                                                                                                                                                                                                       |
| <b>"Main Services"</b>                 | means the FM Services as set out in Part A I of Annex 15-5 to Schedule 15 ( <b>Accommodation</b> ) in relation to the STEPS Premises and as set out in Part A II of Annex 15-5 to Schedule 15 ( <b>Accommodation</b> ) in relation to the NEP Premises.                                                                                                                                                                                                                  |
| <b>"Maintenance Schedule"</b>          | means the timetable or times agreed between the Parties to permit the Supplier to carry out maintenance of the Technical Infrastructure, including routine and ad hoc maintenance opportunities for performing maintenance and other work on the systems provided under the VPaaS Services and, in default of agreement, it includes any reasonable times for maintenance that ought to have been agreed and not unreasonably delayed by the Customer from time to time. |
| <b>"Major KPI Failure"</b>             | has the meaning given in Section 2.2(a) of Annex 4-2 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                                                                                                                                                       |
| <b>"Major Occupier"</b>                | means the Government Department or agency occupying the greatest part of the Estate.                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Malicious Software"</b>            | means: <ul style="list-style-type: none"> <li>(a) any program code and programming instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect Software, data files, Equipment or operations; or</li> <li>(b) any other code typically designated to be a virus, worm, time or logic bomb, disabling code or routine, backdoor or similar.</li> </ul>                                                                |
| <b>"Man-day"</b>                       | means seven point five (7.5) hours of work time. Work time excludes time on annual leave, bank holidays, sick leave, attendance at training courses, and work breaks taken during the day.                                                                                                                                                                                                                                                                               |
| <b>"Manual of Protective Security"</b> | means the security manual of HM Government (as updated and amended from time to time), a copy of which has been                                                                                                                                                                                                                                                                                                                                                          |

|                                                |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                | provided to the Supplier in the supporting information accompanying the ITT and thereafter as and when updated.                                                                                                                                                                                                                                                                                                             |
| <b>"Mapeley"</b>                               | means Mapeley STEPS Contractor Limited, the Customer's provider of fully serviced accommodation over a twenty (20) year contract period, starting on 2 April 2001.                                                                                                                                                                                                                                                          |
| <b>"Material"</b>                              | means any material in whatever form (including written, magnetic, electronic, graphic or digitised) including any methodologies, processes, know-how, reports, specifications, business rules or requirements, manuals, user guides, training materials and instructions, supporting material relating to Software and/or its design, development, modification, operation, support or maintenance, but excluding Software. |
| <b>"Material Default"</b>                      | means any Default by the Supplier which can be reasonably regarded as sufficiently material to warrant Termination of this Agreement.                                                                                                                                                                                                                                                                                       |
| <b>"Measurement Period"</b>                    | means each calendar month.                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Milestone"</b>                             | means a phase or deliverable agreed as a "Milestone" in respect of a Project.                                                                                                                                                                                                                                                                                                                                               |
| <b>"Minimum Performance Level"</b>             | means the level of performance denoted as the 'Minimum Performance Level' in respect of the Prime VPaaS Service Levels, as set out in Annex 4-2 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                               |
| <b>"Minor KPI Failure"</b>                     | has the meaning given in Section 2.2(a) of Annex 4-2 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                                                                                                          |
| <b>"Modernisation Services"</b>                | has the meaning set out in Clause 5.1(a)(iii) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Modernisation Services Charges"</b>        | means the charges payable by the Customer in respect of Modernisation Services, in accordance with Section 12 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                             |
| <b>"Modernisation Services Service Levels"</b> | means the Service Levels in respect of the Modernisation Services, as detailed in Annex 4-3 of Schedule 4 ( <b>Service Measurement</b> ) and the applicable Supplier Proposal.                                                                                                                                                                                                                                              |
| <b>"Modern VME Environment" or "MVE"</b>       | means the Modern VME Environment, an environment provided by the Supplier as part of the Services allowing the continuing operation of the VPaaS Refresh Applications after the VPaaS Refresh Deadline.                                                                                                                                                                                                                     |
| <b>"Modify"</b>                                | means to modify, add to, enhance, reduce, change, replace, vary, derive or improve, and <b>"Modification"</b> and <b>"Modified"</b> have corresponding meanings.                                                                                                                                                                                                                                                            |
| <b>"Monthly"</b>                               | means every calendar month.                                                                                                                                                                                                                                                                                                                                                                                                 |

|                                                  |                                                                                                                                                                                                                   |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Monthly Service Report"</b>                  | means a Monthly report demonstrating the actual performance achieved against each of the Service Levels in the preceding month.                                                                                   |
| <b>"MSS"</b>                                     | means Management Support System.                                                                                                                                                                                  |
| <b>"Multi-Party Dispute"</b>                     | has the meaning given in Section 5.12 of Schedule 8 ( <b>Governance</b> ).                                                                                                                                        |
| <b>"Multi-Party Dispute Representatives"</b>     | has the meaning given in Section 5.13 of Schedule 8 ( <b>Governance</b> ).                                                                                                                                        |
| <b>"Multi-Party Dispute Resolution Board"</b>    | has the meaning given in Section 5.13 of Schedule 8 ( <b>Governance</b> ).                                                                                                                                        |
| <b>"Multi-Party Procedure Initiation Notice"</b> | has the meaning given in Section 5.12(a) of Schedule 8 ( <b>Governance</b> ).                                                                                                                                     |
| <b>"MVE Compliance and Acceptance Testing"</b>   | has the meaning given in Section 2.4(g)(i) of Appendix B of Schedule 2 ( <b>Services</b> ).                                                                                                                       |
| <b>"MVE Compliance Discovery"</b>                | has the meaning given in Section 2.4(e)(i) of Appendix B of Schedule 2 ( <b>Services</b> ).                                                                                                                       |
| <b>"MVE Compliance Transformation"</b>           | has the meaning given in Section 2.4(f)(i) of Appendix B of Schedule 2 ( <b>Services</b> ).                                                                                                                       |
| <b>"NAO"</b>                                     | means the National Audit Office.                                                                                                                                                                                  |
| <b>"National Audit Office Representative"</b>    | means any representative or employee of the NAO or any third party appointed by the NAO to conduct an examination under Section 6 of Schedule 10 ( <b>Audit Access</b> ).                                         |
| <b>"Neutral Adviser"</b>                         | means a neutral adviser or mediator appointed to assist in the resolution of any disputes between the Parties.                                                                                                    |
| <b>"New Data Centre"</b>                         | has the meaning given in Clause 10.3(f)(i) of the Terms and Conditions.                                                                                                                                           |
| <b>"New Services"</b>                            | means services and/or requirements which are different from, and in addition to, the services provided in the provision of the Services.                                                                          |
| <b>"Non-Core Hours"</b>                          | means the non-core hours defined for the applicable element of the VPaaS Services and which, absent such definition, shall be those hours set out in Section 2.8(d) of Schedule 4 ( <b>Service Measurement</b> ). |
| <b>"Normal Working Hours"</b>                    | means the hours between 8.30 am to 5.00 pm London time, excluding weekends and national holidays.                                                                                                                 |
| <b>"Notice of Claim"</b>                         | has the meaning set out in Clause 27.5(a) of the Terms and Conditions.                                                                                                                                            |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Notice of Election"</b>           | has the meaning set out in Clause 27.5(b) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"OCP"</b>                          | means the order code processor - the VME equivalent of a central processing unit being the term originally used in ICL 2900 Series and ICL Series 39 machines for the central processing unit. On current superNOVA and for MVE OCP this translates VME Primitive Level Instructions (PLI) into the instruction set supported by the underlying server.                                                                                                |
| <b>"OCP Usage Limit"</b>              | means 80% of the OCP capacity available for processing using the CHIEF Technical Infrastructure. 80% OCP Usage Limit is calculated as an average over an hour.                                                                                                                                                                                                                                                                                         |
| <b>"Off-shore"</b>                    | any place outside of the United Kingdom (England, Wales, Scotland, and Northern Ireland).                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Open System Standards"</b>        | means (in relation to the Technical Infrastructure or any Work Product) standards or protocols which are: <ul style="list-style-type: none"> <li>(a) non-proprietary; or</li> <li>(b) are open to use by any person without infringement of any third party Intellectual Property Rights; and/or</li> <li>(c) which are publicly available or issued without cost for the purposes of interfacing and interconnectivity with other systems.</li> </ul> |
| <b>"Operating System Instance"</b>    | means an environment for running applications, including, but not limited to those provided by either a Windows or UNIX or Linux operating system, or a VM Host.                                                                                                                                                                                                                                                                                       |
| <b>"Operational Interface"</b>        | has the meaning set out in Section 7.2.(a) of Schedule 8 ( <b>Governance</b> ) of this Agreement.                                                                                                                                                                                                                                                                                                                                                      |
| <b>"Operational Services Charges"</b> | means the charges set out in Section 4 of Schedule 5 ( <b>Charges</b> ) of this Agreement.                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Operational Services"</b>         | means the Prime VPaaS Services, the CHIEF VPaaS Services and the Application Services (subject to Section 13 of Schedule 5 ( <b>Charges</b> )).                                                                                                                                                                                                                                                                                                        |
| <b>"Owed Party"</b>                   | has the meaning set out in Clause 8.7 of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Owing Party"</b>                  | has the meaning set out in Clause 8.7 of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Pass-Through Expense"</b>         | means an expense, related to any items (including goods and services) procured by the Supplier on behalf of the Customer (or at the Customer's request) under this Agreement, in connection with which:                                                                                                                                                                                                                                                |



|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                          | <p>(a) the Parties agree that the Supplier shall act as payment agent for the Customer (as described in Clause 8.2(a) of the Terms and Conditions); or</p> <p>(b) the Parties agree that the Customer shall pay directly (as described in Clause 8.2(b) of the Terms and Conditions),</p> <p>or an expense, related to this Agreement, which is otherwise agreed to be treated as a Pass-Through Expense in accordance with this Agreement.</p> |
| <b>"Performance Monitoring Report"</b>   | has the meaning set out in Section 6.1 of Schedule 9 ( <b>Reporting</b> ).                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"Permitted Maintenance"</b>           | means the periods of time permitted for maintenance agreed with the other Party's representative as part of a Maintenance Schedule and, in default of agreement, it includes any reasonable times for maintenance that ought to have been agreed and not unreasonably delayed by the Customer from time to time.                                                                                                                                |
| <b>"Personal Data"</b>                   | personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Subcontractor pursuant to or in connection with this Agreement.                                                                                                                                                                                                                                                                       |
| <b>"Personal Data Breach"</b>            | a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.                                                                                                                                                                                                                                                    |
| <b>"Plan Delay"</b>                      | has the meaning set out in Clause 15.1 of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Planned Accommodation Exit Date"</b> | has the meaning set out in Section 2.1(a) of Schedule 15 ( <b>Accommodation</b> ).                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Planned Downtime"</b>                | means any time within the Measured Scheduled Hours that the applicable service is not available for use, which has been agreed in advance by the Customer.                                                                                                                                                                                                                                                                                      |
| <b>"Platform"</b>                        | means the Technical Infrastructure used to run applications.                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Pricing File"</b>                    | means the pricing file which, as at the Effective Date, is set out at Annex 5-3 of Schedule 5 ( <b>Charges</b> ), as updated from time to time in accordance with Section 15 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                  |
| <b>"Prime Agreement"</b>                 | has the meaning set out in Recital A of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Prime Charges Element"</b>           | means the charge payable by the Customer in accordance with Clause 4.4(c) and Section 7 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                       |

|                                                       |                                                                                                                                                         |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Prime End"</b>                                    | has the meaning given in Section 7 of Schedule 5 ( <b>Charges</b> ).                                                                                    |
| <b>"Prime Services"</b>                               | means the applicable services delivered under the Prime Agreement.                                                                                      |
| <b>"Prime VPaaS Ancillary Services"</b>               | those services identified as such in Section 3 of Part 4 of Schedule 2 ( <b>Services</b> ).                                                             |
| <b>"Prime VPaaS Applications"</b>                     | means the Business Applications that are hosted on and supported by VME, as identified in Annex 2-1 to Part A of Schedule 2 Part 1 ( <b>Services</b> ). |
| <b>"Prime VPaaS Application Consultancy Services"</b> | means the Services set out in Section 6 of Part 4 of Schedule 2 ( <b>Services</b> ).                                                                    |
| <b>"Prime VPaaS Charging Assumption"</b>              | has the meaning given in Section 10.24 of Schedule 5 ( <b>Charges</b> ).                                                                                |
| <b>"Prime VPaaS Services"</b>                         | has the meaning set out in Clause 5.1(a)(i) of the Terms and Conditions.                                                                                |
| <b>"Prime VPaaS Services Charges"</b>                 | means the charges payable by the Supplier for the Prime VPaaS Services, in accordance with Section 10 of Schedule 5 ( <b>Charges</b> ).                 |
| <b>"Prime VPaaS Services Service Levels"</b>          | means the Service Levels in respect of the Prime VPaaS Services, as detailed in Annex 4-2 of Schedule 4 ( <b>Service Measurement</b> ).                 |
| <b>"Priority Categories"</b>                          | has the meaning set out in Section 3.1(b) of Schedule 7 ( <b>Change Control Procedure</b> ).                                                            |
| <b>"Problem"</b>                                      | means the unknown root cause, or potential cause of one or more Incidents.                                                                              |
| <b>"Process"</b>                                      | has the meaning given to it under the Relevant Data Protection Laws and " <b>Processed</b> " and " <b>Processing</b> " shall be construed accordingly.  |
| <b>"Processing Particulars"</b>                       | has the meaning given in Clause 22.122.1(b)22.1(b)(ii) of the Terms and Conditions.                                                                     |
| <b>"Processor"</b>                                    | has the meaning given in the Relevant Data Protection Laws.                                                                                             |
| <b>"Programme"</b>                                    | means two or more related Projects required to deliver the same business change or to undertake related activities.                                     |

**"Prohibited Act"**

means:

- (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Crown or any Contracting Authority; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Crown or any Contracting Authority; or
- (b) entering into this Agreement or any other contract with the Crown or any Contracting Authority in connection with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge unless, before the relevant contract is entered into, the particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Customer; or
- (c) committing any offence:
  - (i) under the Prevention of Corruption Acts 1889 - 1916;
  - (ii) under Laws creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Crown or any Contracting Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Crown or any Contracting Authority.

**"Prohibited Transaction"**

has the meaning set out in Clause 32.17(a) of the Terms and Conditions.

**"Project"**

means a project that is agreed by the Parties in accordance with Schedule 3 (**Projects and Rate Based Services**).

**"Project Based Charges"**

has the meaning set out in Section 6 of Schedule 5 (**Charges**).

**"Project Delay"**

has the meaning set out in Section 10 of Schedule 3 (**Projects and Rate Based Services**).

**"Project Plan"**

means the plan agreed by the Parties in relation to the delivery of the applicable Project, in accordance with Section 6.1 of Schedule 3 (**Projects and Rate Based Services**).

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Project Services"</b>                    | means the services delivered under the applicable Project.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Protected Supplier IPR"</b>              | <p>means the Supplier's Intellectual Property Rights including Supplier Software or Supplier Materials which the Supplier makes commercially available elsewhere or which the Supplier considers are otherwise sensitive or valuable, including:</p> <ul style="list-style-type: none"><li>(a) VME;</li><li>(b) HostTalk;</li><li>(c) Supernova;</li><li>(d) Vitae;</li><li>(e) SCL or System Control Language for VME;</li><li>(f) IDMSX and other VME related database rights owned by the Supplier;</li><li>(g) Gresham Software; and</li><li>(h) Supplier VME related Confidential Information.</li></ul> |
| <b>"Protective Marking"</b>                  | means the description applied to an asset to indicate its sensitivity or value (fully defined and explained in the Manual of Protective Security).                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"Publicity Material"</b>                  | has the meaning set out in Clause 32.2(b)(i) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Quality Plans"</b>                       | has the meaning given in Clause 7.2(a) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Quarter"</b>                             | means a three calendar month period starting on the first of any of 1 January, 1 April, 1 July or 1 October.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Quarterly Planning Cycle"</b>            | means the quarterly process to be used by the Parties to plan services and resources required and review services and resources consumed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Rate Based Services"</b>                 | means the services charged according to the charging categories set out in Section 14.5 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Rate Card"</b>                           | means the rate card set out in Annex 5-1 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Records"</b>                             | means financial (including financial documents evidencing expenditure and income) and all other data, information and records (in whatever format and whether paper-based or electronically stored in whatever medium) of all products used and services performed in connection with this Agreement.                                                                                                                                                                                                                                                                                                         |
| <b>"Refresh Conversion Analysis Service"</b> | means the service of such name as set out in Section 7.6 of Part 4 of Schedule 2 ( <b>Services</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Related Third Parties"</b>         | has the meaning given in Section 5.12 of Schedule 8 ( <b>Governance</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Release"</b>                       | means in relation to Software, the distribution (whether public or private) of an initial or upgraded version of a computer Software product.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Release Policy"</b>                | an agreed written policy describing the acceptable frequency of Releases to the live environment and the considerations that must be taken into account when determining the Release schedule.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Relevant Data"</b>                 | has the meaning given in Clause 23.3(a) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Relevant Data Protection Laws"</b> | means: (i) the Data Protection Act 2018; (ii) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time; (iii) any other applicable Laws relating to the processing of personal data and privacy; and (iv) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws.                                                                                                                                                                                              |
| <b>"Relief Event"</b>                  | <p>means:</p> <ul style="list-style-type: none"> <li>(a) any Default, or any act or omission, by the Customer or a Services Recipient, or any of their respective employees or authorised persons acting on their behalf (including a Successor Supplier but excluding the Supplier, a Subcontractor, or any Supplier Personnel);</li> <li>(b) any incorrect, wrongful or negligent act or omission of a Services Recipient or any third party engaged by the Customer; or</li> <li>(c) the circumstances set out in Section 8.7 of Schedule 7 (<b>Change Control Procedure</b>).</li> </ul>                                                                                                                |
| <b>"Relief Event Compensation"</b>     | <p>means, pursuant to Clause 16 of the Terms and Conditions, the compensation payable by Customer to Supplier in relation to a Relief Event, which shall be an amount equal to:</p> <ul style="list-style-type: none"> <li>(a) the costs reasonably incurred by the Supplier in mitigating or rectifying the impact of such Relief Event;</li> <li>(b) any Revised Services Costs incurred by the Supplier in connection with the applicable Relief Event; and</li> <li>(c) any Charges that the Supplier has been prevented from recovering due to the Relief Event,</li> </ul> <p>in each case, to the extent that the Supplier can demonstrate it has incurred such costs or has been prevented from</p> |

|                                                   |                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                   | recovering such Charges (as applicable) as a result of the Relief Event.                                                                                                                                                                                                                                                                               |
| <b>"Relief Notice"</b>                            | has the meaning given in Clause 16.1(b) of the Terms and Conditions.                                                                                                                                                                                                                                                                                   |
| <b>"Relief Period"</b>                            | has the meaning given in Section 7.3 of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                                                                                                                                                                |
| <b>"Remediation Arrangement"</b>                  | has the meaning given in Clause 26.2(c) of the Terms and Conditions.                                                                                                                                                                                                                                                                                   |
| <b>"Repeat Failure Count"</b>                     | has the meaning given in Section 2.5.(b) of Part A of Annex 4-1 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                          |
| <b>"Repeat Prime VPaaS Service Level Failure"</b> | has the meaning given in Section 2.5.(a) of Part A of Annex 4-1 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                          |
| <b>"Replacement Application"</b>                  | has the meaning given in Clause 26.2(e)(ii) of the Terms and Conditions.                                                                                                                                                                                                                                                                               |
| <b>"Report"</b>                                   | any document, format of data or information update (whether electronic or paper) to be provided to the Customer by the Supplier from time to time, on a regular or ad-hoc basis, for the purposes of reporting upon the provision of the Services, including the data files and reports listed in Annex 9-1 of Schedule 9 ( <b>Reporting</b> ).        |
| <b>"Request for Work"</b>                         | has the meaning given in Section 11.2 of Schedule 3 ( <b>Projects and Rate Based Services</b> ).                                                                                                                                                                                                                                                       |
| <b>"Resulting Change"</b>                         | means a Change to this Agreement implemented in accordance with the Change Control Procedure, arising as a result of a shared services amendment under the Prime Agreement.                                                                                                                                                                            |
| <b>"Revised Services Costs"</b>                   | means the aggregate of any increased Equipment costs, Software costs, operating costs, implementation costs and financing costs (including the effect of any re-profiling) less the aggregate of any reduced Equipment costs, Software costs, operating costs, implementation costs and financing costs incurred by the Supplier under this Agreement. |
| <b>"RFI"</b>                                      | has the meaning given in Clause 22.2(b) of the Terms and Conditions.                                                                                                                                                                                                                                                                                   |
| <b>"RfW Approval"</b>                             | has the meaning given in Section 11.4 of Schedule 3 ( <b>Projects and Rate Based Services</b> ).                                                                                                                                                                                                                                                       |
| <b>"RfW Response"</b>                             | has the meaning given in Section 11.3 of Schedule 3 ( <b>Projects and Rate Based Services</b> ).                                                                                                                                                                                                                                                       |
| <b>"RMADS"</b>                                    | Risk Management Accreditation Document Set.                                                                                                                                                                                                                                                                                                            |

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"SAN"</b>                             | means "Storage Area Network".                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"Sanitised Personal Data"</b>         | data derived from Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.                                                                                                                                                                                                                                                                                            |
| <b>"Schedule"</b>                        | means each of Schedules 1 to 19 of this Agreement.                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"Security Accreditation"</b>          | means a formal process by which the DSU acknowledges that a specific Implementation will bring an acceptable level of security risk.                                                                                                                                                                                                                                                                                          |
| <b>"Security Aspects Letter"</b>         | means the letter that the Customer issues to advise the Supplier of the required levels of Protective Marking in the provision of the Services.                                                                                                                                                                                                                                                                               |
| <b>"Security Check"</b>                  | means the level of security vetting clearance that the Manual of Protective Security defines as Security Check.                                                                                                                                                                                                                                                                                                               |
| <b>"Security Discrepancy"</b>            | has the meaning given in Clause 22.1(q) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Security Discrepancy Suspension"</b> | has the meaning given in Clause 22.1(q)(ii)(A)(Protection of Personal Data) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                      |
| <b>"Security Incident"</b>               | means any event relating to the provision of the Services and/or any Facilities used by the Supplier Personnel, which event damages or threatens to damage any tangible or intangible asset, including Equipment, Software, Material, Facilities, money, personnel, the confidentiality of information, or the integrity and/or availability of any IT systems (including the Technical Infrastructure) and/or Customer Data. |
| <b>"Security Interest"</b>               | means any security including any mortgage, charge, pledge, lien, hypothecation, assignment or deposit by way of security or any other agreement or arrangement having the effect of providing or giving security or preferential ranking to a creditor (including set-off, retention arrangements which do not arise in the ordinary course of trade, defeasance or reciprocal fee arrangements).                             |
| <b>"Security Management Team"</b>        | means the security management team appointed by the Supplier in connection with this Agreement.                                                                                                                                                                                                                                                                                                                               |
| <b>"Security Operating Procedures"</b>   | means the Customer's security requirements relating to special customer security records.                                                                                                                                                                                                                                                                                                                                     |
| <b>"Security Policy"</b>                 | has the meaning set out in Section 1.2 of Schedule 12 ( <b>Security</b> ).                                                                                                                                                                                                                                                                                                                                                    |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Security Vetting"</b>             | means the clearance of individuals for access to information carrying Protective Markings, following the procedures defined in the Manual of Protective Security.                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Server"</b>                       | means a physical device containing one or more Platforms including all of its integrated and attached devices including (e.g., but not limited to, monitors and keyboards, disk arrays).                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Service Charges" or "Charges"</b> | means the Supplier's charges for the provision of the Services, calculated in accordance with Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Service Credit"</b>               | means an amount calculated in accordance with Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Service Credit Cap"</b>           | has the meaning given in Section 2.3(g) of Annex 4-2 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Service Hours"</b>                | means the hours during which the applicable Services shall be provided, as set out in Schedule 2 ( <b>Services</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Service Level Failure"</b>        | means that the Supplier's performance has fallen below the Target Performance Level for the applicable Service Level.                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Service Levels"</b>               | means the service levels for the applicable Services as set out in Schedule 4 ( <b>Service Measurement</b> ) and, where relevant, the applicable Supplier Proposal.                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Services"</b>                     | has the meaning given in Clause 5.1(a) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Services Recipient"</b>           | means an entity listed as such in Schedule 18 ( <b>Services Recipients</b> ), being an entity other than the Customer which the Parties have agreed shall receive the benefit of all or part of the Services (through this Agreement), and which shall be located in the Territory.                                                                                                                                                                                                                                                             |
| <b>"Serviced Accommodation"</b>       | has the meaning given in paragraph A of Annex 15-3 (Heads of Terms) of Schedule 15 ( <b>Accommodation</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"SLA Relief Event"</b>             | means a failure or delay by the Customer to perform its responsibilities and or contractual obligation (including a Customer Dependency), the direct result of which failure or delay is a requirement for the Supplier to be allowed a delay or additional time to perform tasks which can only have been performed in accordance with the relevant time frame originally envisaged if the Customer had performed the relevant responsibility and or contractual obligation or Customer Dependency (or performed the same in a timely manner). |
| <b>"Shared Services"</b>              | means those tasks, activities and processes which are from time to time:<br>(a) within the scope of the Services; and                                                                                                                                                                                                                                                                                                                                                                                                                           |



- (b) are:
  - (i) provided using the Shared Services Systems and/or using Shared Services Contracts; or
  - (ii) provided using those processes and functional areas which the Supplier uses jointly to provide the services to Customer under the Prime Agreement.

|                                       |                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Shared Services Amendment"</b>    | means a Change that amends or impacts the Shared Services.                                                                                                                                                                                                                                                                                                                    |
| <b>"Shared Services Contract"</b>     | means this Agreement or the Prime Agreement.                                                                                                                                                                                                                                                                                                                                  |
| <b>"Shared Services Systems"</b>      | means those systems or items of equipment which the Supplier uses jointly to provide the Services under this Agreement and services under the Prime Agreement.                                                                                                                                                                                                                |
| <b>"Shared-use Equipment"</b>         | has the meaning set out in Clause 11.1(c) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                        |
| <b>"Software"</b>                     | means any computer program, program interfaces and any tools or object libraries embedded in that software, relevant to the provision or receipt of the Services.                                                                                                                                                                                                             |
| <b>"Source Code"</b>                  | means Software in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code together with all technical information and documentation necessary for the use, reproduction and Modification of such Software.                                                                                                                      |
| <b>"Standard Contractual Clauses"</b> | means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission or a supervisory authority (as such term is defined by the GDPR) which subsequently amends, replaces or supersedes these.     |
| <b>"Start and Stop the Clock"</b>     | means the process set out in Section 2.6 of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                                                                                                                                                                                        |
| <b>"Strategic Discount"</b>           | means the strategic discount for non-remediation set out in Table 1.1 in Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                       |
| <b>"Subcontract"</b>                  | means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the |

|                                                  |                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                  | management, direction or control of the Services or any part thereof;                                                                                                                                                                                                                                                     |
| <b>"Subcontractor"</b>                           | means any subcontractor or agent of the Supplier, including any other Supplier Group Company, that provides services in provision of any of the Services to, or on behalf of, the Supplier.                                                                                                                               |
| <b>"Sub-processor"</b>                           | has the meaning given in Clause 22.122.1(e) of the Terms and Conditions.                                                                                                                                                                                                                                                  |
| <b>"Successor Supplier"</b>                      | means any party (including the Customer or any other Government Department) which the Customer nominates to provide any or all of the Services following Termination of this Agreement.                                                                                                                                   |
| <b>"Supplier Contract Manager"</b>               | means such individual as the Supplier shall nominate, from time to time, to manage and control the relationship with the Customer.                                                                                                                                                                                        |
| <b>"Supplier Data Protection Representative"</b> | means an individual or individuals nominated by the Supplier from time to time to review and manage data protection in relation to this Agreement in accordance with Clause 22.1(o) of the Terms and Conditions.                                                                                                          |
| <b>"Supplier Group"</b>                          | means the Supplier and all of its Affiliates.                                                                                                                                                                                                                                                                             |
| <b>"Supplier Group Company"</b>                  | means a company or other entity that is part of the Supplier Group.                                                                                                                                                                                                                                                       |
| <b>"Supplier Initiated Change"</b>               | means a change initiated and funded by the Supplier where no element of the change has any financial impact on the Customer or requires any commercial involvement from the Customer and has no operational impact on the continuity of provision of the Services, including security, when such changes are implemented. |
| <b>"Supplier Material"</b>                       | means any Material created independently to this Agreement whether before or after its commencement, the Intellectual Property Rights in which are owned by the Supplier or any Supplier Group Company which is used to provide the Services, and shall include all Modifications to such Material.                       |
| <b>"Supplier Modernisation IPR"</b>              | has the meaning given in Clause 12.9(c) of the Terms and Conditions.                                                                                                                                                                                                                                                      |
| <b>"Supplier Non-Performance"</b>                | has the meaning given in Clause 16.1(a) of the Terms and Conditions.                                                                                                                                                                                                                                                      |
| <b>"Supplier Personnel"</b>                      | means employees, officers, consultants, contractors and agents of the Supplier and/or any Subcontractor who are assigned to provide the Services (or any part thereof) pursuant to this Agreement.                                                                                                                        |

|                                             |                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Supplier Proposal"</b>                  | means either a Discovery Proposal or a Delivery Proposal.                                                                                                                                                                                                                                             |
| <b>"Supplier Review Meeting"</b>            | has the meaning given in Section 2.2(a) of Annex 17-1 of Schedule 17 ( <b>Collaboration</b> ).                                                                                                                                                                                                        |
| <b>"Supplier Software"</b>                  | means any Software created independently to this Agreement whether before or after its commencement, the Intellectual Property Rights in which are owned by the Supplier or any Supplier Group Company, which is used to provide the Services, and shall include all Modifications to such Software.  |
| <b>"Supplier Third Party Material"</b>      | means Third Party Material which is licensed to the Supplier by third parties, and which the Supplier makes available to the Customer pursuant to this Agreement.                                                                                                                                     |
| <b>"Supplier Third Party Software"</b>      | means the Third Party Software which is licensed to the Supplier by third parties, and which the Supplier makes available to the Customer pursuant to this Agreement.                                                                                                                                 |
| <b>"Subcontractor Personnel"</b>            | means employees, officers, consultants, contractors and agents of any Subcontractor who are assigned to perform services in provision of the Services or any part of the Services, pursuant to this Agreement.                                                                                        |
| <b>"Supplier-sourced Accommodation"</b>     | means the Supplier's own premises or other premises other than Customer Accommodation which shall be sourced or provided by the Supplier in accordance with Clause 10 of the Terms and Conditions and Schedule 15 ( <b>Accommodation</b> ) and used in connection with the provision of the Services. |
| <b>"Systems Architecture Document"</b>      | means (as a generic term) the detailed description of the live architecture of the Technical Infrastructure for the VPaaS Services.                                                                                                                                                                   |
| <b>"System Change"</b>                      | means a change to any system or operating procedure, implemented pursuant to the Systems Change Management Procedure. A System Change does not include any Change that is subject to the Commercial Impact Procedure.                                                                                 |
| <b>"System Change Management Procedure"</b> | means the procedure for planning, testing, coordinating, implementing and monitoring Systems Changes, as described in Annex 7-3 of Schedule 7 ( <b>Change Control Procedure</b> ).                                                                                                                    |

**"System Design"**

means any documentation and/or schematics including (in whatever format):

- (a) for new services or additions to existing Services, any outputs from the Change Control Procedure (Schedule 7), including:
  - (i) Impact Assessment,
  - (ii) Supplier Proposal,
  - (iii) HLD (high level design),
  - (iv) LLD (low level design), and/or
  - (v) a CCN; and
- (b) for existing Services, all of the above at (a) (if available) or any other documentation that details the activities to be performed, the hardware and/or Software used in the Services.

Such System Design may include, or reference RMADS and/or a Security Risk Assessment.

**"Target Agreement Date"**

has the meaning given in Section 7.2(b)(i) of Schedule 7 (**Change Control Procedure**).

**"Target Performance Level"**

means, in respect of a Service Level, the applicable Target Performance Level for that Service Level as set out in Schedule 4 (**Service Measurement**) or the applicable Supplier Proposal, which is the standard of performance required for that Service Level.

**"Tax"**

means:

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction.

**"Tax Non-Compliance"**

where an entity or person under consideration meets all three conditions contained in the relevant excerpt from the Customer's "Test for Tax Non-Compliance", as set out in

Annex 13-1 of Schedule 13 (**Standards and Regulations**), where:

- (a) the "Economic Operator" means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 8.4(c); and
- (b) any "Essential Subcontractor" means any Key Subcontractor.

**"Technical Infrastructure"**

means the combination of Supplier Equipment, Supplier Software and other items which the Supplier shall from time to time develop, implement and/or operate (as appropriate) in order to provide the Services.

**"Technology Roadmap"**

has the meaning given in Section 1.3 of Annex 2-1(**Technical Infrastructure**) of Schedule 2 (**Services**).

**"Redacted Unavailability"**

has the meaning given in Section 9.2 of Schedule 15 (**Accommodation**).

**"Redacted"**

means the following Customer Accommodation:

**Redacted**

**"Term"**

has the meaning set out in Clause 3.1 of the Terms and Conditions.

**"Term Discount"**

means the term discount set out in Table 1.1 in Schedule 5 (**Charges**).

**"Termination"**

means the termination of this Agreement due to expiry of the Term or a termination of this Agreement pursuant to Clauses 16.3(d), 25.1, 25.2, 25.3 or 29 of the Terms and Conditions.

**"Termination Charges"**

means the charges payable by the Customer in accordance with Clause 29.8 of the Terms and Conditions, as set out in Annex 5-2 of Schedule 5 (**Charges**).

**"Termination Date"**

means the effective date of termination of this Agreement as specified in a notice of termination given in accordance with the Terms and Conditions, or the expiry date of this Agreement.

**"Terms and Conditions"**

means Clauses 1 – 34 of this Agreement.

**"Territory"**

means the country (or countries) in which services in provision of the Services are being or are required to be performed or, as the context requires, were performed.

**"Third Party Material"**

means Material in which the Intellectual Property Rights are owned by a third party.

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Third Party Software"</b>    | means Software in which the Intellectual Property Rights are owned by a third party.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>"Third Party Supplier"</b>    | means a direct supplier of goods or services to the Customer and who is not a Party to this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>"Tools"</b>                   | means any Software that is used for Software Development or testing, data capture, system maintenance, data search, analysis, project management, measurement and monitoring, including related methodologies, processes and know-how.                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>"Trader" or "Trade User"</b>  | means a trader authorised by the Customer to use all or part of the CHIEF VPaaS Services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"TUPE"</b>                    | means the Transfer of Undertakings (Protection of Employment) Regulations 1981.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Turnover Rate"</b>           | has the meaning set out in Section 2.7 of Schedule 14 ( <b>Employees and Subcontractors</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"User Acceptance Testing"</b> | means the testing to be performed by the Customer prior to the VPaaS Environment Refresh being deemed complete.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Utilities Building"</b>      | means the premises known as <b><i>Redacted</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"VME"</b>                     | means the Supplier's "Virtual Machine Environment" mainframe operating system and its related infrastructure and Software components.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"VME Applications"</b>        | means: <ul style="list-style-type: none"> <li>(a) the Prime VPaaS Applications; and</li> <li>(b) the CHIEF Application.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"VME Licence"</b>             | means a licence for the limited use of VME granted by the Supplier to the Customer pursuant to CAN CH00287 of the CHIEF Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"VME Remediation"</b>         | means activity intended to achieve or facilitate the migration of a VME Application to an alternative operating system or platform to VME or the VPaaS Platform, but excluding activity which forms part of Application Transformation and Application Functional Changes and any remediation activities undertaken by the Supplier. Such VME Remediation activity may include: <ul style="list-style-type: none"> <li>(a) changes to the VME Applications' code and the Software components and interfaces that relate to such applications; and/or</li> <li>(b) the use of separate applications and Software components, such as replicators, emulators, middleware or migration accelerators.</li> </ul> |

|                                                |                                                                                                                                                                                                                                                               |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"VPaaS Additional Storage Charges"</b>      | means the charges calculated and payable in accordance with Sections 10.14 – 10.19 (inclusive) of Schedule 5 ( <b>Charges</b> ).                                                                                                                              |
| <b>"VPaaS Ancillary Services Baseline"</b>     | has the meaning set out in Section 10.20(a) of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                 |
| <b>"VPaaS Ancillary Services Charges"</b>      | means the charges payable by the Customer to the Supplier in respect of the VPaaS Ancillary Services as set out in Section 10.21 of Schedule 5 ( <b>Charges</b> ).                                                                                            |
| <b>"VPaaS Charges"</b>                         | means the Prime VPaaS Services Charges and the CHIEF VPaaS Services Charges.                                                                                                                                                                                  |
| <b>"VPaaS Environment Refresh"</b>             | means the refresh of the VPaaS systems environment, as described in Schedule 2 ( <b>Services</b> ) and which forms part of the Prime VPaaS Services.                                                                                                          |
| <b>"VPaaS Environment Refresh Methodology"</b> | has the meaning given in Section 1.2(b) of Appendix B of Schedule 2.                                                                                                                                                                                          |
| <b>"VPaaS Final Refresh Deadline"</b>          | means the longstop date by which the applicable VME Application must be ready to be Live on VME (as specified in Clause 6.6, Clause 6.7 and Clause 6.8), following which the circumstances in Clause 6.11 shall apply.                                        |
| <b>"VPaaS GPLI Charges"</b>                    | means the charges payable by the Customer to the Supplier in respect of the Prime VPaaS Services as set out in Table 1.1 of Schedule 5 ( <b>Charges</b> ).                                                                                                    |
| <b>"VPaaS Integration Platform"</b>            | means the platform supporting a suite of Software from the Supplier delivering terminal emulation and HostTalk digital integration capabilities.                                                                                                              |
| <b>"VPaaS No-Refresh Applications"</b>         | means any VME Applications that will not be subject to the VPaaS Environment Refresh, as such applications are listed in Schedule 2 Appendix A ( <b>VME Applications</b> ) subject to subsequent amendment in accordance with Schedule 2 ( <b>Services</b> ). |
| <b>"VPaaS Platform"</b>                        | means the Technical Infrastructure used to provide the Prime VPaaS Services.                                                                                                                                                                                  |
| <b>"VPaaS Platform Changes"</b>                | has the meaning given in Clause 6.4 of the Terms and Conditions.                                                                                                                                                                                              |
| <b>"VPaaS Readiness Project"</b>               | means the Project of such name entered into by the Parties in July 2016 in anticipation of the VPaaS Refresh Applications moving to the MVE.                                                                                                                  |
| <b>"VPaaS Refresh Applications"</b>            | means any VME Applications that will be subject to the VPaaS Environment Refresh.                                                                                                                                                                             |

|                                                |                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"VPaaS Refresh Deadline"</b>                | means the date by which the applicable VME Application must be ready to be Live on VME, as specified in Appendix A ( <b>VME Applications</b> ) to Schedule 2 ( <b>Services</b> ).                                                                                                                                                                                                               |
| <b>"VPaaS Services"</b>                        | means the Prime VPaaS Services and the CHIEF VPaaS Services.                                                                                                                                                                                                                                                                                                                                    |
| <b>"VPaaS Storage Baseline"</b>                | has the meaning set out in Section 10.14 of Schedule 5 ( <b>Charges</b> ).                                                                                                                                                                                                                                                                                                                      |
| <b>"VPaaS Termination Assistance Services"</b> | has the meaning set out in Clause 29.7(b) of the Terms and Conditions.                                                                                                                                                                                                                                                                                                                          |
| <b>"Waterfall Project"</b>                     | has the meaning given in Section 2.3 of Schedule 3 ( <b>Projects and Rate Based Services</b> ).                                                                                                                                                                                                                                                                                                 |
| <b>"Work Product"</b>                          | means any deliverable (in whatever form), including any Software or Materials, which may be created or developed by or on behalf of the Supplier and subsequent Modifications to the same in the course of and for the purpose of the provision of the Services, whether solely or jointly by the Supplier and the Subcontractors but excluding Third Party Software and Third Party Materials. |
| <b>"Working Day"</b>                           | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.                                                                                                                                                                                                                                                                                       |



**SCHEDULE 2**  
**SERVICES**

## CONTENTS

|                  |                                                      |                                                                                                                                               |
|------------------|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Part 1</b>    | <b>General</b>                                       | Scope<br>Locations<br>Service Hours<br>Data Centres<br>Networks<br>Security<br><b><i>Redacted</i></b><br>Exit                                 |
| <b>Part 2</b>    | <b>Platform as a Service</b>                         | Move from VME to MVE<br>HostTalk<br><br>VME Applications<br>Move to MVE<br>Changes needed to VPaaS<br>Changes at move to MVE<br>Service Hours |
| <b>Part 3</b>    | <b>CHIEF VPaaS Services</b>                          |                                                                                                                                               |
| <b>Part 4</b>    | <b>PRIME VPaaS Services</b>                          |                                                                                                                                               |
| <b>Part 5</b>    | <b>Modernisation Services</b>                        |                                                                                                                                               |
| <b>Part 6</b>    | <b>Application Services</b>                          |                                                                                                                                               |
| <b>Annex 2-1</b> | <b>Technical Infrastructure</b>                      |                                                                                                                                               |
| <b>Annex 2-2</b> | <b>The Service Description Modules</b>               |                                                                                                                                               |
| <b>Annex 2-3</b> | <b>Customer Dependencies</b>                         |                                                                                                                                               |
| <b>Annex 2-4</b> | <b>Customer Third Party Contracts &amp; Licences</b> |                                                                                                                                               |
| <b>Annex 2-5</b> | <b>Modernisation Services</b>                        |                                                                                                                                               |
| <b>Annex 2-6</b> | <b>Application Services</b>                          |                                                                                                                                               |
| <b>Annex 2-7</b> | <b>Data Processing</b>                               |                                                                                                                                               |

## Abbreviations

The following abbreviations are used in this Schedule 2 (**Services**):

| Abbreviation | Definition                                                                                   |
|--------------|----------------------------------------------------------------------------------------------|
| ACMS         | Aspire Configuration Management Services                                                     |
| AUSD         | Aspire User Service Desk                                                                     |
| CHIEF        | Customs Handling of Import and Export Freight                                                |
| DR           | Disaster Recovery                                                                            |
| EDCS         | Electronic Data Capture Service                                                              |
| EMC          | Enterprise Management Console                                                                |
| IES          | Import Export System                                                                         |
| IST          | Supplier's Infrastructure Support Team                                                       |
| ITSC         | Information Technology Service Centre                                                        |
| Linux        | Operating System                                                                             |
| SAN          | Storage Area Network                                                                         |
| STS          | Shared Technology Services                                                                   |
| VadIX        | Software used on Vados boxes for Protocol Conversion                                         |
| Vados        | Black Box Solution used for Protocol Conversion                                              |
| VME          | Virtual Machine Environment, the Supplier's mainframe operating system.<br>Short for OpenVME |

## SCHEDULE 2

### PART 1 - GENERAL

#### 1. CONTENTS

- 1.1 This Schedule 2 (**Services**) sets out the Services to be provided by the Supplier to the Customer under the Agreement.
- 1.2 This part – **Part 1** - is of general application to one or more of the Services and deals with the following:
- (a) Scope;
  - (b) Locations;
  - (c) Service Hours;
  - (d) Data Centres;
  - (e) Networks;
  - (f) Security;
  - (g) Standards;
  - (h) **Redacted**
  - (i) Anti-virus;
  - (j) Escrow;
  - (k) Exit from the Services; and
  - (l) General Customer Dependencies.
- 1.3 **Part 2** deals with matters that are common to the Services delivered as a platform as a service by the CHIEF VPaaS Services and or Prime VPaaS Services. The Appendices to this Part of the Schedule relate to the move of the CHIEF VPaaS Services and Prime VPaaS Services from a Platform using VME to one using MVE are as follows:
- (a) **Appendix A – VME Applications** - the VME Applications in scope of the CHIEF VPaaS Services and the Prime VPaaS Services and the timing of their readiness for their respective moves to MVE;
  - (b) **Appendix B – Move to MVE** - the activities to be performed by the Supplier and the Customer in order to prepare for MVE and then change from the VME Applications running on a Platform that uses VME to one using MVE;
  - (c) **Appendix C – VPaaS Changes** - the upgrades and activities that the Supplier and the Customer have each agreed to carry out by the dates shown for the operation of the VME Applications using the CHIEF VPaaS Services and the Prime VPaaS Services irrespective of the moves to MVE detailed in Appendices A and B;

- (d) **Appendix D – Scope Changes at Move to MVE** – the changes in scope for the Prime VPaaS Services at the time of a move from VME to MVE; and
- (e) **Appendix E – VPaaS Services Hours** – the hours during which VPaaS Services are provided by the Supplier.

1.4 Then subsequent parts deal with the following specific Services:

- (a) **Part 3** - the CHIEF VPaaS Services;
- (b) **Part 4** - the Prime VPaaS Services;
- (c) **Part 5** - the Modernisation Services; and
- (d) **Part 6** - the Application Services.

1.5 The Annexes to this Schedule comprise:

- (a) **Annex 2-1 (Technical Infrastructure)**: the Technical Infrastructure used by the supplier to provide the CHIEF VPaaS Services and Prime VPaaS Services;
- (b) **Annex 2-2 (Service Description Modules)**: the service description modules applicable (with variations) to the CHIEF VPaaS Services and the Prime VPaaS Services where stated to be applicable in the Parts 3 and 4 of this Schedule;
- (c) **Annex 2-3 (Customer Dependencies)**: the obligations and responsibilities placed on the Customer relating to the Services;
- (d) **Annex 2-4 (Third Party Contracts and Licences)**: the elements of the Services to be supplied by a third party;
- (e) **Annex 2-5 (Modernisation Services)**: the standard terms that the Parties may agree shall apply to a Project to deliver Modernisation Services. Note: these terms are not mandated and any Modernisation Services shall be on terms to be agreed in writing by the Parties;
- (f) **Annex 2-6 (Application Services)**: the standard terms that the Parties may agree shall apply to Application Services. Note: these terms are not mandated and any Application Services shall be on terms to be agreed in writing by the Parties; and
- (g) **Annex 2-7 (GDPR & Data Processing)**: tables setting out the basis of processing arising in connection with the provision of the Services.

## 2. SCOPE

2.1 The scope of the Services to be provided is as set out in this Schedule.

2.2 To the extent that an element of either the CHIEF VPaaS Services or Prime VPaaS Services is provided partly by the Supplier and partly by the Customer or a Third Party Supplier to the Customer, then the Services required from the Supplier are as set out in this Agreement which reflects the extent of the scope that the Supplier is responsible for and, notwithstanding Schedule 4 (**Service Measurement**), the Supplier shall have

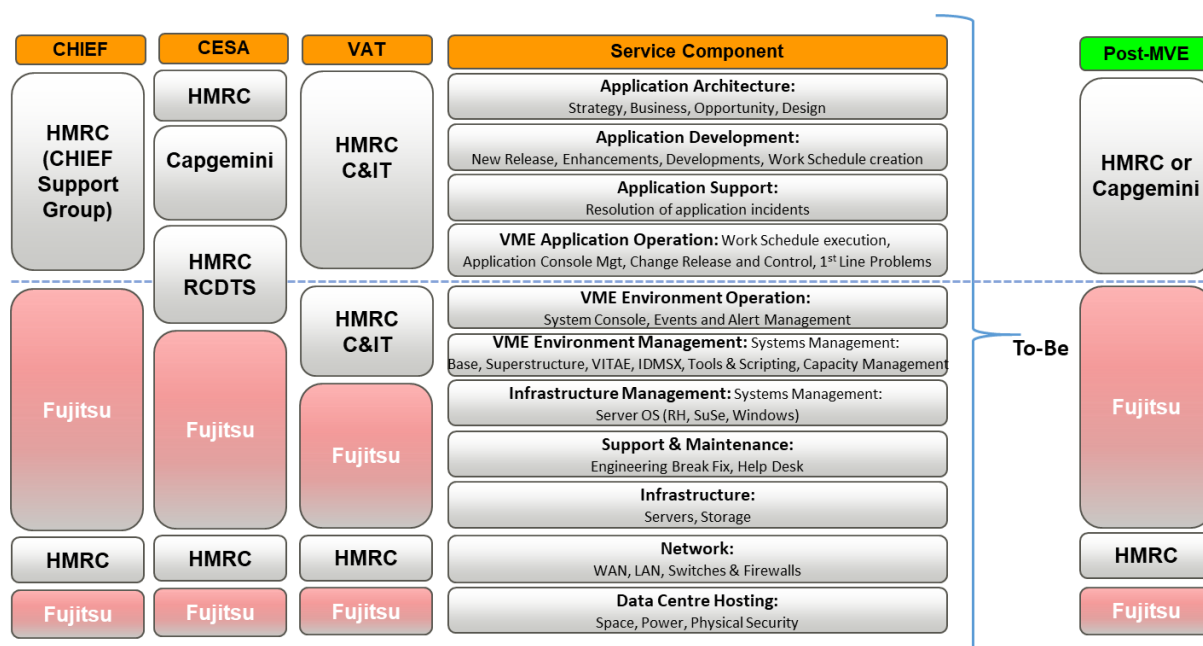
no responsibility for performance of those elements of the services which are provided by the Customer or its Third Party Suppliers save to the extent expressly set out.

- 2.3 Wherever an element of Services specifies a duty to comply with a standard, policy, procedure, strategy or other rule of the Customer or a Third Party Supplier, the Customer shall be responsible for ensuring that the relevant standard, policy, procedures, strategy or other rule is appropriate and communicated to the Supplier.

2.4 Scope of CHIEF VPaaS Services and Prime VPaaS Services:

- (a) Unless otherwise expressly stated in this Schedule the Parties intend that the scope of the CHIEF VPaaS Services and the Prime VPaaS Services that are to be delivered under this Agreement from the Effective Date is the same scope as was delivered by the Supplier to the Customer under the CHIEF Agreement and under Schedule 35 of the Prime Agreement immediately prior to the Effective Date. The Supplier confirms that it will continue to perform Incident resolution and Problem management in accordance with the approach adopted and responsiveness as currently delivered under the CHIEF Agreement and the Prime Agreement.
- (b) The following diagram (Diagram 1) shows an outline of the service elements and responsibilities for the CHIEF VPaaS Services and the Prime VPaaS Services before the move to MVE and the adjustment in scope resulting from any move of the CHIEF VPaaS Services and Prime VPaaS Services to MVE. (In so far as the Customer does not move a VME Application to MVE the Services for that VME Application shall remain as shown notwithstanding that other VME Applications have moved to MVE):

**Diagram 1 Service elements and responsibilities before and after MVE:**



- (c) As can be seen from Diagram 1, the scope of Services for the VME Applications comprising CESA and VAT as a result of the Prime VPaaS Services shall change as a result of such VME Applications moving from VME to MVE:
  - (i) The Services after the move to MVE shall be amended in accordance with Appendix D which shows how the Parties intend to reorganise VME application operation, VME environment operation and VME environment management before and after the move of VME Applications to MVE.
  - (ii) Save as set out in Appendix D the scope of all other elements of CHIEF VPaaS Services and Prime VPaaS Services will remain unchanged in scope before and after the move to MVE.
- (d) Out of Scope
  - (i) As shown in Diagram 1, the following service components for the Customer's enjoyment of the CHIEF VPaaS Services and Prime VPaaS Services are out of scope of the Services and this Agreement (unless expressly set out in this Schedule as a Supplier obligation):
    - (A) Application architecture including strategy, business, opportunities and design;
    - (B) Application development including new Releases, enhancements, developments, and work schedule creation;
    - (C) Application support including resolution of Incidents relating to the VME Applications or the HostTalk applications;
    - (D) Operation of applications including work schedule execution, application console management, change Release and control, 1st line application problems; and
    - (E) Network including WAN, LAN and network components including switches and firewalls.
  - (ii) Certain elements of the Services are provided by the Prime Agreement and not by this Agreement for the duration of the Prime Agreement. The Parties have agreed terms for such elements to move to this Agreement from the Prime Agreement if Prime ceases to make such elements available. This includes for example the hosting elements provided via Prime Agreement for Prime VPaaS Services Technical Infrastructure. Where elements of the Prime Agreement are provided on a costed basis with separate charges for such as elements of BC/DR services and the procurement of Vados Equipment and support the Parties intend to move such elements or replicate arrangements for such items to this Agreement as a result of a Change pursuant to the Change Control Procedure.
  - (iii) The Parties acknowledge that, at the date of signature of this Agreement, certain parts of this Schedule 2 (**Services**) require further actions, as follows:

- (A) Within thirty (30) days following signature, the Supplier shall provide and architectural scoping diagram reflecting the Technical Infrastructure – The Parties have agreed that no further action is required;
- (B) The Parties will further develop Appendix B to clarify the potential impact on roles and privileges, including the timing of any changes (including any changes to sysman and Master) in conjunction with the move to MVE – The Parties have agreed that no further action is required;
- (C) The Parties shall document the BC/DR obligations in a summary reflecting the Supplier's role in such activities as part of the work-off activity in respect of BC/DR set out in Section 2.4(d)(ii) above – The Parties have agreed that this will be effected by way of an agreed CCN; and
- (D) the Supplier will provide a new version of Annex 2-3 (Customer Dependencies) rationalising the same – The Parties have agreed that this will be effected by way of an agreed CCN.

### 3. LOCATIONS

- 3.1 Unless otherwise provided in this Agreement, the Supplier is free to provide the Services from any suitable locations and premises in the United Kingdom.
- 3.2 In so far as the Supplier is required to deliver any aspect of the Services from specified Customer locations these are detailed in Schedule 15 (**Accommodation**). The Customer shall comply with its obligations under Schedule 15 (**Accommodation**) to make available to the Supplier suitable accommodation at such locations as required to deliver the Services.
- 3.3 The Customer and the Supplier shall update and maintain a version of Schedule 15 (**Accommodation**) throughout the Term and any Changes shall be via a formal Change Request in accordance with the Change Control Procedure. Neither Party shall unreasonably refuse or delay such a Change.

### 4. SERVICE HOURS

- 4.1 Unless otherwise expressly agreed or set out in this Schedule in respect of a specific element of the Services the Parties agree that the Services are to be provided during the relevant hours set out in Appendix E to this Schedule.

### 5. DATA CENTRES

- 5.1 The Data Centre locations for the Technical Infrastructure used to provide the CHIEF VPaaS Services and Prime VPaaS Services from the Effective Date are set out in Schedule 15 (**Accommodation**). Any change to such Data Centre locations or subsequent Data Centre shall be dealt with in accordance with the Change Control Procedure and in accordance with Clause 10.3 of the Terms and Conditions.
- 5.2 The Supplier has agreed as part of providing the CHIEF VPaaS Services and Prime VPaaS Services for the Charges that it will provide Technical Infrastructure for these



Services to coincide with their move from the use of VME to MVE. Such Technical Infrastructure shall be built in the Data Centres in use at the time for the CHIEF VPaaS Services and Prime VPaaS Services. The Parties acknowledge and agree that if a change of Data Centres occurs before the VME Applications are ready for a move to MVE or after such a move has already occurred that this may necessitate additional Technical Infrastructure in the New Data Centres and subject always to Clause 10.3 of the Terms and Conditions such additional Technical Infrastructure needed for such a move will result in additional Charges. The Parties intend to document a non-contractual diagram of the architectural configuration of the VPaaS Services provided.

- 5.3 The Parties agree that for the purposes of the Modernisation Services there is no requirement for hosting and no restriction on the Supplier using suitable Data Centres of its choice notified to the Customer in advance for its work in connection with such Modernisation Services, subject always to compliance with the Supplier's security obligations under Schedule 12 (**Security**).
- 5.4 In respect of any Application Services the Parties shall agree at the time details of where the relevant applications shall be hosted as part of any such Services whether using a Data Centre or cloud hosting.

## 6. STORAGE

- 6.1 The Supplier shall provide elements of storage for use in conjunction with the VPaaS Services.
- 6.2 Storage for VAT and CESA is outlined in Schedule 5 (**Charges**).
- 6.3 Current CHIEF storage is shown in the following table:

BY3 – 96 \* 18GB = **1.728 TB disc / 2.384 TB Tape**

PT6 – 128 \* 18GB = **2.304 TB disc / 19.998 TB Tape**

LD1 – 128 \* 18GB = **2.304 TB disc / 5 TB Tape**

Note: Disc is a fixed allocated figure which includes what is in use and available for use by VME. Tape is very dynamic and is the in use at this moment figure.

- 6.4 The provision and further storage over and above the storage needed for up to four hundred million (400,000,000) Declarations or for other purposes (including for CHIEF VPaaS Services) may be purchased as set out in Schedule 5 (**Charges**).
- 6.5 For the avoidance of doubt storage for the Oracle database used for CESA and its related Equipment is out of scope of this Agreement and the Services.

## 7. MONITORING

- 7.1 The Supplier will monitor key service components across the VPaaS Platform with automated alerts reasonably required to achieve and maintain the Service Levels.
- 7.2 The Supplier will act upon these alerts and undertake actions to maintain the Services to the Service Levels.

- 7.3 The Platform(s) will be monitored 24 x 7 x 365 at a number of levels using a combination of automated utilities, Supplier Software (including internally developed Tools) and procedures and operations, system support specialists and diagnosticians.
- 7.4 Monitoring will raise alerts to highlight the need for preventative actions to avoid an Incident and to identify when components of the service are not operating to normal service operation.
- 7.5 The Supplier will provide monitoring as a minimum for the key service components required in order to provide information in respect of Service Levels in accordance with Schedule 4 (**Service Measurement**).

## 8. NETWORKS

- 8.1 Save as expressly stated in this Schedule the Services do not include the provision of network connectivity required by the Services to achieve the Service Levels which the Customer shall be responsible for providing.
- 8.2 The Customer is responsible for providing remote network access to the Supplier by allowing the Supplier to connect via the Customer's firewall(s) in order to get remote access to the Servers forming the VPaaS Platform. As a consequence the Supplier has no responsibility for the network connectivity at all. The networks plug in to the network interface cards on the Servers and from there on, through the routers and firewalls out to the external interfaces and this is all provided and managed by the Customer.
- 8.3 The Customer shall be responsible for implementing protections at the network firewalls to prevent virus and other attacks on the VPaaS Services.
- 8.4 The networks shall be provided by the Customer. Note that the SAN is within the Supplier's scope of responsibility but a SAN is not a network in this context.

## 9. SECURITY

- 9.1 The Supplier shall perform the Services in accordance with its obligations under this Agreement including Schedule 12 (**Security**).
- 9.2 For the avoidance of doubt the Supplier has no obligations, other than one of reasonable cooperation and support, in respect of security accreditation for the VPaaS Services or the Services.

## 10. STANDARDS

- 10.1 The Supplier shall perform the Services in accordance with its obligations under Clause 7.2 and Schedule 13 (**Standards and Regulations**).
- 10.2 The Parties agree that in respect of the Services unless otherwise expressly agreed the only Customer policies applicable to this Agreement are relevant are those within the Security Policy, as identified in Schedule 12 (**Security**). For the avoidance of doubt other than in respect of the Security Policy this Schedule shall prevail. Unless otherwise expressly agreed between the Parties in writing, the following Customer policies shall not apply:

- (a) Delivery Management;
- (b) Change Management;
- (c) Release Management;
- (d) Service Management;
- (e) Capacity Management;
- (f) Incident and Problem Management; and
- (g) Asset Management.

**11. *Redacted***

**12. ANTI-VIRUS**

- 12.1 The Supplier's obligations in respect of anti-virus is limited. In respect of the VPaaS Services, the Supplier patches CHIEF, CESA and VAT for Windows Servers used in these Services only in line with the Customer account Prime anti-virus service.
- 12.2 The Supplier does not patch Servers for anti-virus using VME/MVE or Linux operating systems which the Parties agree is consistent with the current agreed practices. The Customer shall be responsible for ensuring that appropriate anti-virus protections are in place at its firewalls to prevent transfer to the VME/MVE or Linux operating systems.

**13. ESCROW**

- 13.1 Unless expressly agreed as part of Modernisation Services and or Application Services the Supplier is under no obligation to make any escrow arrangements in respect of any Supplier Software or other Software.

**14. EXIT FROM SERVICES**

- 14.1 Exit and Exit Management shall be managed separately from the Services in this Schedule in accordance with Clause 29.7(b) of the Terms and Conditions in respect of VPaaS Termination Assistance Services.
- 14.2 Without prejudice to Clause 29.8 of the Terms and Conditions, the Parties acknowledge in respect of exit of this Agreement, that any arrangements will differ between the types of Services:
- (a) The CHIEF VPaaS Services: in accordance with Clause 29.7(b) of the Terms and Conditions;
  - (b) The Prime VPaaS Services: in accordance with Clause 29.7(b) of the Terms and Conditions;
  - (c) The Modernisation Services: The Supplier will provide all outputs from its Modernisation Services on exit reasonably required by the Customer save to the extent that the same contain the Suppliers Intellectual Property or Confidential Information; and

- (d) The Application Services: The Supplier will provide all outputs from its Application Services on exit reasonably required by the Customer save to the extent that the same contain the Supplier's Intellectual Property or Confidential Information and the Customer has not been granted ongoing rights in respect of the same.

## 15. CUSTOMER DEPENDENCIES

- 15.1 Performance of the Services by the Supplier is subject to the Customer meeting its obligations under this Agreement, and also the obligations in respect of the Customer Dependencies detailed in this Schedule in respect of the Services, in each case so as to enable the Supplier successfully to deliver the Services and the Customer to receive the same.
- 15.2 In particular the Customer shall promptly and proactively perform:
  - (a) the Customer Dependencies set out in Annex 2-3 to this Schedule;
  - (b) all activities reasonably required to enable the VME Applications to be capable of moving to a VPaaS service that uses MVE or removed in accordance with Appendix A of this Schedule 2 (**Services**);
  - (c) in respect of the move from the use of VME to MVE the Customer shall perform its obligations and responsibilities in accordance with Appendix B of this Schedule 2 (**Services**); and
  - (d) the Customer shall perform and complete its obligations and responsibilities in respect of changes to VPaaS in accordance with Appendix C of this Schedule 2 (**Services**).

## SCHEDULE 2

### PART 2 – PLATFORM AS A SERVICE

#### 1. SCOPE

- 1.1 This Part 2 deals with the general aspects of the CHIEF VPaaS Services and Prime VPaaS Services which are both Services that provide a Platform as a service for the VME Applications.
- 1.2 It includes the move of VME Applications from a Platform using VME to one using MVE.
- 1.3 The Parties acknowledge and agree that the ASN, LUCAS and MSS systems are all out of scope of the CHIEF VPaaS Services and Prime VPaaS Services. To the extent these may be provided by the Supplier they are out of scope of this Agreement and if provided are subject to the Prime Agreement.

#### 2. CESA HOSTTALK

##### 2.1 HostTalk Web Servers

- (a) The CESA HostTalk application provides a Web Forms user interface for CESA end users.
- (b) The Supplier will provide a number of Windows Platforms for use as HostTalk Web Servers for the CESA HostTalk application. These are FAST-P Servers.
- (c) The Supplier will install HostTalk .NET Connector on the CESA HostTalk Web Servers.
- (d) The Supplier will provide 4th-line support for the HostTalk .NET Connector Software during the hours (Monday to Friday, 09:00-17:00, excluding English public holidays).
- (e) The Customer will deploy the CESA HostTalk applications on the HostTalk Web Servers and be responsible for:
  - (i) administering the HostTalk .NET Connector;
  - (ii) developing and maintaining the CESA HostTalk application;
  - (iii) operating the CESA HostTalk Web Forms application; and
  - (iv) 1st, 2nd and 3rd line support for the CESA HostTalk Web Forms applications and HostTalk .NET Connector installation.

*Note that additionally Load Balancer devices are used to load balance end user access between the CESA HostTalk Web Servers, and also to load balance requests from the CESA HostTalk Web Servers to the MMP instances described below. These are managed by the Customer.*

##### 2.2 MMP

The Supplier will provide, operate and support VJC (VME Java Connector) on the VME host Platforms to provide MMP (Multi-purpose Multiplexing Protocol) gateways between the CESA HostTalk applications and the CESA TP services.

### 2.3 VME Comms Client

- (a) The Supplier will provide VME Comms Client terminal emulation Software for the Customer to use to access the CESA system.
- (b) The Customer will deploy the VME Comms Client Software on client devices e.g. PCs.
- (c) The Supplier will provide 4th-line support for any VME Comms Client licenced Software during the hours: Monday to Friday, 09:00-17:00, excluding English public holidays.

### 2.4 HostTalk Developer Toolkit

- (a) The Supplier will provide HostTalk Developer Toolkit Software for the Customer to use to develop and maintain the CESA HostTalk applications.
- (b) The Customer will deploy the HostTalk Developer Toolkit Software on their Windows client devices or Servers as required.
- (c) The Supplier will provide 4th-line support for the HostTalk Developer Toolkit Software during the hours: Monday to Friday, 09:00-17:00, excluding English public holidays.

### 2.5 BROCS

- (a) The BROCS HostTalk Web Servers provides Customer's staff with access to the BROCS service.
- (b) The Supplier provides a number of Windows Platforms for use as BROCS HostTalk Web Servers. [*These are physical Servers for Live and virtual Servers for Clone, **Redacted***]
- (c) HostTalk .NET Connector has been installed on the BROCS HostTalk Web Servers and the WebTPMS feature has been configured to provide a web user interface.
- (d) The HostTalk Web Servers have **Redacted** HostTalk .NET Connector installed on them.
- (e) Insofar as the Customer wishes to use HostTalk in respect of BROCS, the Customer will be responsible for:
  - (i) administering and operating the HostTalk .NET Connector
  - (ii) configuring the WebTPMS feature of the HostTalk .NET Connector
  - (iii) 1st, 2nd and 3rd line support for the BROCS HostTalk .NET Connector installation and WebTPMS configuration

- (f) As the HostTalk .NET Connector Software is **Redacted** then any support provided by the Supplier would be charged on a time and materials basis and with no Service Levels.

## 2.6 CBIX

This is out of scope for this Agreement.

## 2.7 CHIEF

*This is initially be out of scope for this Agreement, but may be added via the Change Control Procedure at a later date – included here for information only.*

- (a) The Supplier is developing a CHIEF RoRo API for the Customer for integrating CHIEF and GVMS. This will use HostTalk .NET Connector. The target infrastructure is likely to be AWS provided by the Customer. The target operating model and the Supplier's responsibilities are TBD, but may include application management and operation of the CHIEF RoRo API plus support for the HostTalk runtime.
- (b) The proposal for the modernisation of the 5 Non-VAT Accounting applications include provision of a new Trader API between the migrated VAT Certs application and the VAT mainframe. This will use HostTalk .NET Connector. This would run on AWS provided by the Customer, but the Supplier would provide application management and operation of the Trader API. VME CoE would develop the Trader API application, but ongoing application management and operation would be done by the Supplier's AMCS.

## 3. LICENCES & CONFIGURATION

### 3.1 CESA HostTalk

- (a) The Supplier will provide the following CESA HostTalk Web Servers and licences:
  - (i) Live – 5 Servers - each with a 4,500 HostTalk .NET Connector user licence
  - (ii) Clone – 4 Servers - each with a 4,500 HostTalk .NET Connector user licence
  - (iii) Dev – 3 Servers - each with a 100 HostTalk .NET Connector user licence
- (b) Notwithstanding this alignment of licences the use included under this Agreement is capped at 15,000 concurrent Customer end users of HostTalk .NET Connector for use in conjunction with CESA (prior to and post migration to MVE).

### 3.2 CESA MMP

- (a) The Supplier will deploy VME Java Connector on each CESA Live, Dev and Clone host Server to provide MMP gateways.

- (b) The Supplier will provide an MMP Service Connector licence for each VME Java Connector installation used to provide an MMP Gateway [*This is currently 2 for Development, 2 for Clone/DR and 3 for Live, but will increase in future – for MVE and changes to the DR approach.*]

### 3.3 CESA VME Comms Client

The Supplier will provide 648 VME Comms Client user licences. [*These have already been provided to the Customer, based on the number of users requiring terminal access which may vary in future.*]

### 3.4 CESA HostTalk Developer Toolkit

The Supplier will provide 1 HostTalk Developer Toolkit licence. [*The licence has already been provided.*]

### 3.5 BROCS HostTalk

- (a) The BROCS application will be replaced in accordance with Appendix A. Until then the following is provided.
- (b) The Supplier will provide the following BROCS HostTalk Web Servers and licences: All – 3 Servers - each with a 3000 HostTalk .NET Connector user licence.
- (c) Notwithstanding this alignment of licences the use included under this Agreement is capped at 100 concurrent Customer end users of HostTalk .NET Connector for use in conjunction with BROCS.

## 4. PLATFORM AS A SERVICE

- 4.1 The Supplier undertakes that in the performance of the VPaaS Services, including the VPaaS Environment Refresh that it shall not unless otherwise expressly agreed charge the Customer for its routine technology refresh activities in respect of the Technical Infrastructure comprising the VPaaS Platform.
- 4.2 The Parties acknowledge that to the extent the Customer requires Changes to the VPaaS Platform to accommodate the Customer's technology refresh activities, for example arising from upgrades to VME Applications, such Changes shall be addressed as Projects and shall be separately chargeable in accordance with the Rate Card.

## 5. DUE DILIGENCE

- 5.1 In respect of Clause 2.2 (**Due Diligence**) the Parties agree that the Supplier has not undertaken due diligence activities in respect of all source and object code of the VPaaS Refresh Applications.

## 6. VPAAS ENVIRONMENT REFRESH

- 6.1 Following the Effective Date the Parties shall progress the VPaaS Environment Refresh in accordance with this Schedule.
- 6.2 The VPaaS Environment Refresh is a series of activities which shall result in the ability to refresh the Software environment that supports the Applications Running on VPaaS,



including the related system management, operations management and middleware Software components, in order to enable the ongoing operation of the Applications Running on VPaaS by the VPaaS Services beyond the VPaaS Refresh Deadline.

- 6.3 In order to achieve the VPaaS Environment Refresh the Parties shall each carry out their obligations in accordance with Appendix B and Appendix C, and the Customer Dependencies in order to achieve the VPaaS Environment Refresh by the dates set out in Appendix A.
- 6.4 The Parties agree that subject to the matters set out in the Agreement and in this Schedule there shall be no change to the CHIEF VPaaS Services and Prime VPaaS Services during, or as a result of, the VPaaS Environment Refresh.
- 6.5 The Customer has identified which applications running on VPaaS shall be VPaaS Refresh Applications or VPaaS No-Refresh Applications as recorded and updated and now set out in Appendix A.
- 6.6 From the Effective Date, the Customer shall continue to provide the Supplier with as much of the information set out in the Application Information List as is reasonably practical. In so far as the Customer is unable to provide the application information reasonably necessary for the Application Planning Process and the VPaaS Environment Refresh and the Supplier is required to carry out work in order to ascertain the information required or to obtain information not provided by the Customer, then the Supplier reserves the right to charge the Customer for additional costs incurred, such costs to be paid in accordance with the Relief Event Compensation.
- 6.7 The Customer agrees to exercise its rights under its collaboration arrangements with other suppliers in order to obtain such information from its application providers.
- 6.8 Subject to the Customer's compliance with the Customer Dependencies and all other relevant Customer obligations, the Supplier shall ensure that all VPaaS Refresh Applications are able to operate on the MVE by the VPaaS Refresh Deadline. The Parties shall, via the Change Control Procedure, jointly agree whether to make the decision as to whether to move the VPaaS Refresh Applications to MVE or leave them running on VME as at the VPaaS Refresh Deadline. For the avoidance of doubt such an operational change decision shall require the Change Control Procedure and will be made after consultation and agreement of both the Customer and the Supplier.
- 6.9 The VPaaS Refresh Deadline shall be the only date agreed between the Parties for the purposes of Clause 15 (**Plans and Delays**) in respect of the VPaaS Services. Unless otherwise agreed, Schedule 3 (**Projects**) shall not apply.
- 6.10 The Parties acknowledge that with respect to VPaaS Environment Refresh timescales and deadlines, if:
- (a) the VPaaS Environment Refresh for an Application Running on VPaaS is not completed by the VPaaS Refresh Deadline as a result of the Customer failing to provide a Customer Dependency or as a result of a Customer request; or
  - (b) the Customer requests that a VPaaS No-Refresh Application continues to be supported by the Supplier after the VPaaS Refresh Deadline and the Supplier does not accept such request,

then Clause 6 of the Terms and Conditions shall apply. In either case such a result shall not operate to reduce any committed Charges which did not anticipate such a reduction in the Services.

- 6.11 With respect to any VPaaS No-Refresh Applications, if the Customer migrates these to an alternative Platform to VPaaS, then the impact of such migration is:
- (a) the VPaaS Services (including the VPaaS Environment Refresh) do not include the provision of services by the Supplier in support of such migration, including amongst other things any application interface changes;
  - (b) the VPaaS Platform shall not be available for use by the relevant application(s) from the point of their cut-over to an alternative Platform, except where an Application Transformation Project requires the operation of phased migration or a parallel run; and
  - (c) the VME operating system on superNOVA shall not be available for use by the relevant application(s) or supported from the VPaaS Refresh Deadline. The VME operating system on superNOVA may be made available to the Customer in the event of a migration scenario up to the VPaaS Refresh Deadline, subject to separate agreement by the Parties.
- 6.12 For the avoidance of doubt, the VPaaS Services are provided as a Platform as a service and the Software and other Intellectual Property involved in providing the service shall not be available separately to the Customer.

## APPENDIX A

*Redacted*

**APPENDIX B**

*Redacted*

## APPENDIX C

*Redacted*

## APPENDIX D

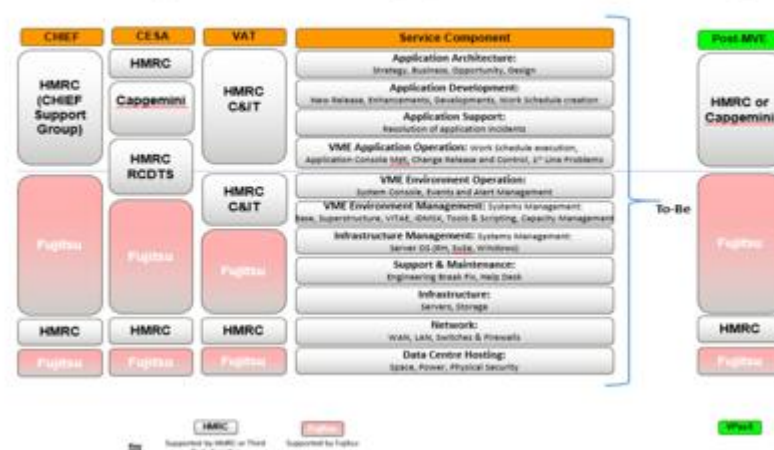
### SCOPE CHANGES ASSOCIATED WITH MOVE TO MVE

#### 1. SCOPE CHANGES ASSOCIATED WITH MOVE TO MVE

- 1.1 The following changes in scope shall be managed between the Parties in order to reorganise VME Application Operation, VME Environment Operation and VME Environment Management before and after the move of VME Applications to MVE.
- 1.2 This section outlines the anticipated changes in support roles, responsibilities and processes resulting from the move of CESA/VAT to the MVE VPaaS environment Management & Operation. It is outline only at this stage and the Parties will need to agree the detail of the operational changes needed and their timing.
- 1.3 Under MVE VPaaS some activities historically performed by Customer teams will now be performed by the Supplier. Many of these will be performed as part of an agreed schedule but will also be available on request.
- 1.4 For CESA the following changes apply to the VME Environment Operation management layer:
  - (a) These include:
    - (i) Re-alignment of Support User access so that only the Supplier teams have access to the privileged VME/MVE System Users;
    - (ii) Rationalisation of the support activities to remove activities that are or will become redundant under MVE.
  - (b) The following become a Supplier responsibility:
    - (i) Loading / Reloading VME/MVE;
    - (ii) Session Start Up including Start & Closing of system tasks to support the application;
    - (iii) System Archiving (backups);
    - (iv) OCF Management;
    - (v) Abandoning Jobs (if required by the customer due to Incidents;
    - (vi) Print queue management;
    - (vii) Ad-Hoc Workmix Updates;
    - (viii) Set up, deletion & viewing of DOST Scheduler;
    - (ix) Personal and VME user Password Management;
    - (x) System-wide Environment SCL Installs;
    - (xi) Start & Closing RSM;

- (xii) Housekeeping of system related journal and spool libraries i.e. JINX;
  - (xiii) Start of day routines, START\_SESSION, RSM Service, MultiMAC management, Blackhole, DAILYAUDIT, Release FTF scheduler.
- 1.5 For VAT, in addition to the list above (except the use of MASTER described below), the following changes apply to the VME Environment Management layer:
- (a) Rationalisation of support activities so that the Supplier owns and manages all activities related to its responsibilities in delivering the VME Environment Management.
  - (b) Re-alignment of Support User access so that only the Supplier teams have access to the O/S level of the Platform. This would include control of the VITAE/Appex Software layer.
  - (c) Re-alignment of the support activities so that the Supplier has responsibility for management of the VME Base, Superstructure and system Software elements.
- 1.6 Particular attention will be paid to the re-alignment of Support User access with respects to the user MASTER. The Customer VAT support teams will retain access to the user MASTER but not the MASTER console. This is to reduce the risk of having to change their process for promoting code from their development environment to the live environment. All other aspects of the user MASTER will be transferred to the Supplier. The Customer can only use MASTER expressly for code promotion only and must not use it for anything else (or Service Levels will not apply).
- 1.7 For CHIEF, there are no changes required.
- 1.8 On the 11 Layer service model below, these activities would bring CESA & VAT VME/MVE services to the same level as CHIEF as indicated by the hashed blue line.

### VPaaS Operational Support Model Changes



## 1.9 Roles &amp; Responsibility Summary RACI

|                                                              | SERVICES          | As Is    |          | To Be    |          |
|--------------------------------------------------------------|-------------------|----------|----------|----------|----------|
|                                                              |                   | CUSTOMER | SUPPLIER | CUSTOMER | SUPPLIER |
| Service Management Application                               | CHIEF, VAT & CESA |          |          |          |          |
| Service Management Infrastructure                            | CHIEF, VAT & CESA |          |          |          |          |
| Batch processes                                              | CHIEF, VAT & CESA |          |          |          |          |
| Batch incident                                               | CHIEF, VAT & CESA |          |          |          |          |
| Helmsman Tool Support                                        | VAT               |          |          |          |          |
| VME environmental support (hardware)                         | CHIEF, VAT & CESA |          |          |          |          |
| superNOVA environment support (LINUX)                        | CHIEF, VAT & CESA |          |          |          |          |
| VME Operating System Support                                 | CHIEF & CESA      |          |          |          |          |
| VME Operating System Support                                 | VAT               |          |          |          |          |
| Loading & taking down Application services (BAU)             | CHIEF, VAT & CESA |          |          |          |          |
| Disaster Recovery Invocation                                 | CHIEF, VAT & CESA |          |          |          |          |
| System Backup & restore                                      | CHIEF, VAT & CESA |          |          |          |          |
| IDMS Database and data dictionary support & Backup & Restore | CHIEF, VAT & CESA |          |          |          |          |
| Network Support                                              | CHIEF, VAT & CESA |          |          |          |          |
| System SCL Code Support                                      | VAT               |          |          |          |          |
| System SCL Code Support                                      | CHIEF & CESA      |          |          |          |          |
| Release management                                           | CHIEF, VAT & CESA |          |          |          |          |
| Application Configuration Management                         | CHIEF, VAT & CESA |          |          |          |          |
| Infrastructure Configuration Management                      | CHIEF, VAT & CESA |          |          |          |          |
| Testing Application Changes                                  | CHIEF, VAT & CESA |          |          |          |          |
| Incident Management - Application                            | CHIEF, VAT & CESA |          |          |          |          |
| Incident Management - Infrastructure                         | CHIEF, VAT & CESA |          |          |          |          |



|                                                       |                      |  |  |  |  |
|-------------------------------------------------------|----------------------|--|--|--|--|
| Problem management<br>_Application                    | CHIEF, VAT &<br>CESA |  |  |  |  |
| Problem management-<br>Infrastructure                 | CHIEF, VAT &<br>CESA |  |  |  |  |
| Major Incident<br>Management -<br>Application         | CHIEF, VAT &<br>CESA |  |  |  |  |
| Major Incident<br>Management -<br>Infrastructure      | CHIEF, VAT &<br>CESA |  |  |  |  |
| Application<br>Middleware support                     | CHIEF, VAT &<br>CESA |  |  |  |  |
| Application Early<br>Morning Checks                   | CHIEF, VAT &<br>CESA |  |  |  |  |
| Infrastructure Early<br>Morning Checks                | CHIEF, VAT &<br>CESA |  |  |  |  |
| JMS Gateway Support<br>and licence server<br>software | CHIEF                |  |  |  |  |
| Business Objects<br>Support                           | CHIEF                |  |  |  |  |
| Application<br>Development                            | CHIEF, VAT &<br>CESA |  |  |  |  |
| Test Driver updates                                   | CHIEF                |  |  |  |  |
| Application Change<br>Management                      | CHIEF, VAT &<br>CESA |  |  |  |  |
| Infrastructure Change<br>Management                   | CHIEF, VAT &<br>CESA |  |  |  |  |
| On Call Management -<br>Infrastructure                | CHIEF, VAT &<br>CESA |  |  |  |  |
| On Call Management -<br>Application                   | CHIEF, VAT &<br>CESA |  |  |  |  |
| SAN Management                                        | CHIEF, VAT &<br>CESA |  |  |  |  |
| VTL Management                                        | CHIEF, VAT &<br>CESA |  |  |  |  |
| Oper Management                                       | CHIEF                |  |  |  |  |
| Oper Management                                       | VAT & CESA           |  |  |  |  |
| Service Desk                                          | CHIEF, VAT &<br>CESA |  |  |  |  |

**APPENDIX E****VPAAS SERVICES HOURS**

This Appendix E sets out the hours during which VPaaS Services are provided by the Supplier.

| <b>Service Hours</b>    | <b>Definition</b>                                                                                                                            |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| "Normal Business Hours" | Work is performed during a 37.5 hour week between the hours of 0900 and 1730 daily, excluding Saturdays, Sundays and English Public Holidays |

| <b>VME SERVICE</b> | <b>SERVICE HOURS for Availability of LIVE Services</b>                                    | <b>NOTES for Incident Resolution</b>                                                                                                                                                                                                                                                                                                                    |
|--------------------|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CHIEF              | 24x7x365 (inc. Bank Holidays)                                                             | All calls P1, P2 and P3 are covered 24x7x365 (inc Bank Holidays)<br><br>CHIEF does not utilize the concept of P4 and P5.                                                                                                                                                                                                                                |
| VAT                | Mon-Fri 08:00hrs – 18:00hrs<br><br>No Bank Holiday Cover                                  | Calls taken 24x7x365 (inc Bank Holidays)<br><br>Then, after triage:<br><br>P1 & P2 resolved via Technical Infrastructure table below<br><br>P1 & P2 (non- Technical Infrastructure issue) are responded to Mon-Fri 08:00hrs – 18:00hrs - No Bank Holiday Cover.<br><br>P3, P4 & P5 are responded to in Normal Business Hours                            |
| CESA               | Mon-Fri 07:30hrs – 20:15hrs<br><br>Sat – 08:00hrs – 16:30hrs<br><br>No Bank Holiday Cover | Calls taken 24x7x365 (inc Bank Holidays)<br><br>Then, after triage:<br><br>P1 & P2 resolved via Technical Infrastructure table below<br><br>P1 & P2 (non- Technical Infrastructure issue) are responded to Mon-Fri 07:30hrs – 20:15hrs; Sat – 08:00hrs – 16:30hrs - No Bank Holiday Cover.<br><br>P3, P4 & P5 are responded to in Normal Business Hours |

| <b>Technical Infrastructure</b> | <b>SERVICE HOURS</b>          | <b>NOTES</b>          |
|---------------------------------|-------------------------------|-----------------------|
| ALL                             | 24x7x365 (inc. Bank Holidays) | P1, P2 & P3 for CHIEF |

|  |  |                                                                                    |
|--|--|------------------------------------------------------------------------------------|
|  |  | P1 & P2 for VAT and CESA<br><br>Otherwise responded to in<br>Normal Business Hours |
|--|--|------------------------------------------------------------------------------------|

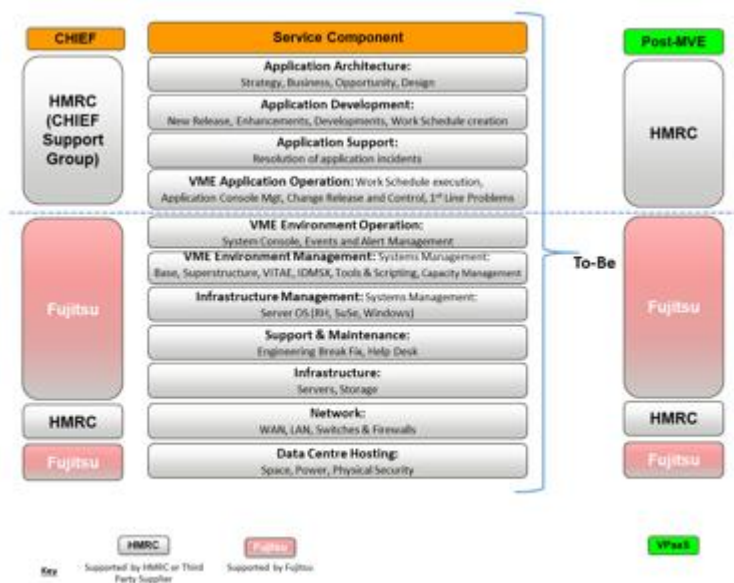
|                             |                                                                                                                                                                                                                                                      |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CHIEF Service<br>Management | The Supplier shall provide a CHIEF VPaaS Services service management<br>function from 08:00 to 18:00, Monday to Friday, excluding public holidays<br>in England.<br><br>Outside of these hours, the Supplier will still provide the triage function. |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## PART 3

### CHIEF VPAAS SERVICES

#### 1. INTRODUCTION

- 1.1 This Part 3 of Schedule 2 sets out the scope of the CHIEF VPaaS Services to be provided by the Supplier and a description of each part of the CHIEF VPaaS Services to be provided broken down into the service elements to be provided by the Supplier and also the Customer and illustrated in Diagram 2 below.
- 1.2 The scope of the CHIEF VPaaS Services that the Supplier shall be responsible for, subject to the terms set out in this Agreement (and the Customer's responsibilities), are:
- (a) Hosting of the CHIEF Platform including space, power and physical security of the hosting environment;
  - (b) Architecture and strategy input making available to the Customer the Supplier's expertise and consultancy concerning the evolution of the Customer's VME and MVE CHIEF architecture and strategy;
  - (c) Technical Infrastructure for the CHIEF Platform including Servers, storage backup monitoring and alerting;
  - (d) Support and maintenance of the Technical Infrastructure provided for the CHIEF VPaaS Services including engineering break-fix;
  - (e) Technical Infrastructure management being CHIEF systems management for Server operating systems (VME and MVE; Linux and Windows);
  - (f) Environment management being CHIEF systems management for VME /MVE, Superstructure, HostTalk (not including the HostTalk runtime applications), VITAE and associated Tools and scripting;
  - (g) Environment operations being CHIEF systems console management, Events and Alert management;
  - (h) Access to VME and MVE related documentation via the Supplier's collaboration portal which provides access for the Customer to VME and MVE related content documentation and a portal service to provide web based access to such documentation; and
  - (i) Security Management in respect of the CHIEF VPaaS Services provided by the Supplier under this Schedule in accordance with Schedule 12 (**Security**).
- 1.3 Diagram 2 CHIEF VPaaS Services - elements and responsibilities before and after MVE:



- 1.4 Where a service element applies to both the Customer and the Supplier separately in respect of the service elements and other elements of service, which they deliver jointly, unless otherwise expressly stated only the Supplier's responsibility in respect of the CHIEF VPaaS Services is shown in this Schedule.
- 1.5 Where an element of service requires the Supplier to provide inputs or information, including forecasts, the Supplier shall supply such inputs or information to the Customer in respect of the CHIEF service elements (including where reasonably required applicable Assets owned or managed by the Supplier) for which it has a responsibility to ensure the end to end Service Levels for the wider CHIEF Service are achieved. This shall include inputs and information relating to Subcontractors.

## **2. CHIEF VPAAS SERVICES – CUSTOMER’S OBJECTIVES**

2.1 The Customer’s CHIEF IES System comprises ten (10) business components:

- (a) Customs Processing;
- (b) Goods Release Processing;
- (c) Input / Output Channels;
- (d) Declaration Receipt;
- (e) Risk Management;
- (f) Payment Management;
- (g) Casework Management;
- (h) Knowledge Management;
- (i) Customer Management; and
- (j) Reference Data Management.

2.2 The objective of the Supplier providing the CHIEF VPaaS Services is to support the Customer’s CHIEF IES Systems is as set out in this Part 3 of this Schedule 2 (**Services**):

- (a) to allow the Customer’s CHIEF IES Systems to receive, validate and accept import and export declarations; risk profile them; calculate and collect duties and Taxes; and interface with externally-managed systems (i.e. systems not managed by the Supplier) at ports and airports to clear goods and release them from customs and port and airport jurisdiction; and
- (b) to allow the Customer’s CHIEF IES System to capture information used in compiling the UK’s trade statistics, and provide interfaces with the Customer’s other IT systems, other Government departments (including the Service Recipients and where relevant Member States of the EU).

## **3. CHIEF SERVICE MANAGEMENT MANUAL**

3.1 From time to time the Customer has produced a CHIEF Service Management Manual relating to the Customer’s end to end management of its CHIEF service.

3.2 The latest version 3.0b is out of date and the Parties acknowledge no longer applicable contractually to the CHIEF VPaaS Services. If the Customer wishes to update its document then the Supplier will provide reasonable assistance to the Customer to update and agree the Customer’s CHIEF Service Management Manual and will provide updates to the CHIEF Service Management Manual following any change to the manner in which it provides the CHIEF VPaaS Services. Both Parties will if required appoint a representative to discuss, review and agree the content of the CHIEF Service Management Manual. For the avoidance of doubt the CHIEF Service Management

Manual is not a contractually binding document between the Parties and does not define the CHIEF VPaaS Services or how they are to be delivered.

- 3.3 Once updated and agreed by the Parties the CHIEF Service Management Manual specifies how the Supplier will work together with the Customer to implement and deliver the CHIEF VPaaS Services. This document forms a reference manual for the CHIEF VPaaS Services, listing any agreed procedures and giving contact points in the Supplier and the Customer and their respective roles and responsibilities.
- 3.4 Once updated and agreed between the Parties the CHIEF Service Management Manual will be reviewed throughout the lifetime of the Agreement to ensure it remains current and relevant to the Customer's requirements and to reflect needs as they evolve. The Customer will have responsibility for the CHIEF Service Management Manual and will undertake regular reviews on a basis agreed between the Parties. Once a CHIEF Service Management Manual is agreed the Supplier shall be entitled to rely on the Customer's requirements and instructions contained in the CHIEF Service Management Manual when delivering the CHIEF VPaaS Services against the same.
- 3.5 The objectives of the CHIEF Service Management Manual will be to:
- (a) define the strategy for quality assurance and control of the CHIEF VPaaS Services as well as establish a common understanding of the approach to be used to deliver the CHIEF VPaaS Services;
  - (b) provide a schedule of meetings and reporting, identifying frequency and attendees for CHIEF VPaaS Services specific topics;
  - (c) incorporate the Customer's quality related procedures, as applicable to the Supplier's CHIEF VPaaS Services;
  - (d) assist the understanding of the terms of the Agreement by the Supplier's Service Manager (SM) and by the Service Delivery Managers who are responsible for the day-to-day operation of the CHIEF VPaaS Services;
  - (e) document or reference any specific versions of procedures, standards and methods which are applicable to the delivery of the CHIEF VPaaS Services;
  - (f) provide an outline of the technical environment within which the CHIEF VPaaS Services are provided; and
  - (g) outline the resources and procedures needed to deliver the CHIEF VPaaS Services in order to meet the contractual requirements and the Service Levels.

#### **4. CHIEF VPAAS SERVICES - GENERAL**

- 4.1 The Supplier shall maintain stable live, development and test environments, and ensure that the CHIEF VPaaS Services are monitored and maintained in line with the applicable Service Levels and with the applicable Security Policies.
- 4.2 The Supplier will undertake any corrective maintenance ensuring that all problems are raised and logged centrally.

- 4.3 In the event of the Supplier's failure to provide the CHIEF VPaaS Services or to comply with its obligations in accordance with this Agreement, the Customer may, without prejudice to its other rights, require the Supplier to re-perform the CHIEF VPaaS Services or to comply with its obligations at the Supplier's expense.

## 5. SCOPE OF THE CHIEF VPAAS SERVICES

- 5.1 The following components are in the scope of Service Support for the Supplier in the provision of the CHIEF VPaaS Services:

- 5.2 Hardware support and maintenance for the physical CHIEF Technical Infrastructure:

- (a) Hardware support for the Virtual Tape Libraries;
- (b) Data Centre Technical Infrastructure for the CHIEF Systems at Data Centres.;
- (c) Fibre connection between SDC01 and SDC02 to support DR and Business Continuity requirements and or with any replacement Data Centres;
- (d) VME, Linux and Windows Operating Systems support;
- (e) Alerting and monitoring on the CHIEF IES System;
- (f) Capacity Management;
- (g) Availability Management;
- (h) Backup and Recovery of the CHIEF Servers;
- (i) Storage Management;
- (j) Incident Management for Infrastructure;
- (k) Problem Management for Infrastructure;
- (l) Risk Management for Infrastructure;
- (m) Disaster Recovery Management;
- (n) Security;
- (o) Governance;
- (p) Third Party Management – management of Subcontractors involved in the delivery of the CHIEF VPaaS Services (none at the Effective Date);
- (q) Service Management support in accordance with and restricted to the obligations set out in this Part 3 of Schedule 2 and Schedule 4 (**Service Measurement**) where appropriate;
- (r) Exit Management in accordance with and restricted to the obligations set out in this Agreement;



- (s) Hardware support for the SAN in accordance with and restricted to the obligations set out in this Part 3 of Schedule 2 and Schedule 4 (**Service Measurement**) where appropriate;
- (t) Annual Disaster Recovery rehearsal in accordance with and restricted to the obligations set out in this Part 3 of Schedule 2 and Schedule 4 (**Service Measurement**) where appropriate; and
- (u) Business Continuity support in accordance with and restricted to the obligations set out in this Part 3 of Schedule 2 and where appropriate Schedule 4 (**Service Measurement**).

5.3 The service elements which detail the Supplier's obligations in respect of the CHIEF VPaaS Services against such scope are listed in the following table with their content and purpose set out in Annex 2-2 (**Service Description Modules**).

|                                                                                                                                                                                                                                                      | CHIEF                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| (a) <b>Hosting</b> of the VPaaS platform including space, power and physical security of the hosting environment                                                                                                                                     | OPS-01 OPS-10<br>OPS-02 OPS-12<br>OPS-03 OPS-13<br>OPS-05                                                                            |
| (b) <b>Infrastructure Provision</b> for the VPaaS platform including servers and storage                                                                                                                                                             | OPS-02<br>TPM-01                                                                                                                     |
| (c) <b>Support and maintenance</b> of the Infrastructure provided for the VPaaS Services including engineering break-fix                                                                                                                             | OPS-01<br>OPS-02 APP-03<br>APP-04<br>OPS-13 APP-05<br>APP-01 APP-02 TPM-01                                                           |
| (d) <b>Systems management</b> being systems management for server operating systems (Linux and Windows)                                                                                                                                              | TPM-01<br>OPS-01<br>OPS-06<br>OPS-13<br>APP-02                                                                                       |
| (e) <b>Environment management</b> being systems management for VME /MVE, Superstructure, VITAE and associated tools and scripting; VME / MVE system back up                                                                                          | OPS-01<br>OPS-06<br>OPS-07<br>OPS-13<br>TPM-01                                                                                       |
| (f) <b>Environment operations</b> being systems console management, Events and Alert management. thresholds are exceed in order to return the services to within the agreed thresholds                                                               | Despite not monitoring the Application we do monitor the "Application Platform" which is VME<br>TPM-01<br>OPS-01<br>OPS-06<br>OPS-13 |
| (g) Access to <b>VME and MVE related documentation</b> via the Supplier's documentation portal providing access for the Customer to VME and MVE related content documentation and a portal service to provide web based access to such documentation | SM-02 for requests for access                                                                                                        |

|                                                                                                                                      |                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| (h) <b>Security Management</b> in respect of the services provided by the Supplier under this Schedule in accordance with Schedule 3 | OPS-01 from an audit and compliance perspective<br>OPS-12<br>SM-01<br>SM-02 |
| (i) <b>Service Management</b>                                                                                                        | SM-01 SM-05<br>SM-02 SM-06<br>SM-03 SM-07<br>SM-04 SM-08                    |

## 6. SCOPE OF SERVICE SUPPORT

6.1 The following are the responsibility of the Customer and out of scope of the Supplier's obligations in respect of the CHIEF VPaaS Services:

- (a) CHIEF Application management, development, support and maintenance;
- (b) Data connections to the Community Service Providers;
- (c) Network design and support;
- (d) Service Desk or Help Desk;
- (e) VadIX Software support on the Vados boxes;
- (f) Megawatch Software support;
- (g) Service Management;
- (h) Exit Management; and
- (i) Business Continuity.

## 7. SERVICE BOUNDARIES OF THE CHIEF VPAAS SERVICES

7.1 The provision of the CHIEF VPaaS Services by the Supplier shall be up to and including the following service boundaries:

- (a) The Technical Infrastructure for CHIEF VPaaS Services
- (b) Service Boundaries with Trade Systems and Trade Users
  - (i) Technical
    - (A) The boundary of the CHIEF VPaaS Services in each Data Centre is up to but not including Communications Termination Equipment. The provision, support and security of the communications links and Communication Termination Equipment from the Customer or third parties in the Data Centres is not the responsibility of the Supplier and all responsibility for dealing with this aspect shall remain with the Customer for the Customer to deal with any third party.

- (B) For Trader access via EDCS, the service boundary is as defined in Section 7.1(c)(i) below.
    - (ii) Service Support
      - (A) The Supplier's support service boundary for the CHIEF VPaaS Services is the Customer's Third Party CHIEF Service Desk.
  - (c) Service Boundaries with the Customer's other systems and the Customer Users
    - (i) Technical

The technical services boundary for the CHIEF VPaaS Services is the switches (outside of the Supplier-provided firewalls) that connect to the Customer communication links. The provision and support of the Customer communication links from these switches are the responsibility of the Customer.
- 7.2 The Parties have earlier agreed that the Supplier shall not provide any of the CHIEF VPaaS Services, or have any other obligations, responsibilities or liability, in respect of OSI after 31 December 2020. Nothing in this Agreement shall permit any use of OSI beyond 31 December 2021 and the CHIEF VPaaS Services may not function after that date if OSI is not addressed in accordance with Appendix C. All support, maintenance and other services relating to OSI after the date shown in Appendix C shall be the Customer's sole responsibility.
- 7.3 The CHIEF VPaaS Services also include (subject to the Change Control Procedure):
- (a) the provision of additional test environments as may be specified in a Change Request for a particular CHIEF development project; and
  - (b) performance volume testing (PVT) capability where changes to infrastructure are required or significant increases in volumes are forecast.
- 7.4 The Supplier acknowledges that, subject to Clause 5.3 of the Terms and Conditions, the CHIEF VPaaS Services are used by the Customer to provide information and access to the Service Recipients.
- 7.5 The CHIEF VPaaS Services functionality provided by the Supplier as agreed pursuant to this Agreement will be maintained throughout the Term (unless modified in accordance with the Change Control Procedure) and will be the reference point for any testing.
- 7.6 Where, in relation to any element of the CHIEF VPaaS Services, the Supplier will provide a plan to the Customer, the Supplier shall consult with the Customer in relation to the elements of such plan, and the Customer will have the opportunity to review and will provide input (where appropriate).
- 7.7 The Supplier acknowledges and agrees that the Customer shall be responsible for all access to the CHIEF System by CHIEF Users and the consequences of such access.
- (a) Subject to the Customer complying with its obligations under this Agreement and ensuring that any version or Release is VME and MVE compliant, the

Supplier shall ensure that all CHIEF VPaaS Services are enhanced in order to support later versions and Releases of component Software (including all Third Party Software used in the provision of the services) such that the Customer may ensure that each program is kept within the support arrangements of the supplier of the Software (save as set out below or except where the Parties otherwise agrees in writing). In particular:

- (i) A "Major Upgrade" is defined as a change where the new version or Release of the Software (i.e., typically, a step increase version) is generally accepted, by reference to a reputable benchmarking organisation, to introduce Material or significant new business or technical functionality, demand substantial application alteration or substantial re-testing because of, for example, changes to underlying directory structures, changes to implemented business processes, significant Platform change, or significant amendments to product interfaces, and where backwards compatibility is not built in to the new version or Release. "Major Upgrade" excludes bug-fixes, and/or both systemic and generic or individual, one-off and standalone patches issued to rectify identified faults and improve resilience and serviceability.
  - (ii) The Supplier shall seek the Customer's prior written approval to any Major Upgrade to Supplier provided Third Party Software other than one required by the move to MVE. In relation to Major Upgrades, the Parties shall discuss via the Change Control Procedure whether to take any Major Upgrade. The Parties shall discuss and agree through the Change Control Procedure the scope of work required to implement new Major Upgrades, provided that, if agreed, any associated costs including infrastructure costs, shall be borne by the Customer.
  - (iii) The Customer shall be responsible for (and shall bear all costs of) all Third Party Software Releases, versions and upgrades including Major Upgrades (i.e., typically, dot Releases) and associated support charges where the Third Party Software is the responsibility of the Customer.
  - (iv) The Supplier shall be responsible for (and shall bear all costs of) all Third Party Software Releases, versions and upgrades other than Major Upgrades (i.e., typically, dot Releases) where the Third Party Software is identified as being the responsibility of the Supplier in Annex 2-4 to this Schedule. This includes costs associated with implementation and licensing of such new Releases, versions or upgrades; costs of required upgrades to other Software, Tools and applications used or maintained as part of the CHIEF VPaaS Services to take account of such new Releases, versions or upgrades; and all Software upgrades of non-functional items done by the Supplier to improve its performance (e.g., moving to a more advanced Software development toolset to improve development productivity). For the avoidance of doubt, neither Party shall be entitled to recover from the other Party any consequential effort that is required in fulfilling the requirements of this Section 7.7(iv) of this Part 3.
- (b) If requested by the Customer, the Supplier shall provide the Customer with decommissioning services relating to the CHIEF IES System including the

migration of data from the CHIEF System to any replacement systems procured by the Customer ("**CHIEF Decommissioning Services**"). The scope of such Decommissioning Services shall be agreed by the Parties in accordance with the Change Control Procedure. The Parties agree that the Charges for such Decommissioning Services shall be based on the agreed Rate Card.

- (c) The CHIEF IES Test (LD1) infrastructure environment provided as Technical Infrastructure:
  - (i) is provided by the Supplier solely for use as a test environment, and it cannot be used as a production or Disaster Recovery environment;
  - (ii) shall not exceed the capacity of the IES Live (production) environment; and
  - (iii) shall perform in an equivalent manner to, and to the same performance standards as, the IES Training environment.

## 8. PRIME AGREEMENT

- 8.1 The Parties acknowledge that the Supplier's delivery of the CHIEF VPaaS Services is dependent on payment for certain services provided under the Prime Agreement including, without limitation, the Data Centre network and related services. The Parties have agreed arrangement that will provide for such elements when the Prime Agreement ends.

## 9. LD1 AND SUPPLIER TESTING TEAM

- 9.1 The Supplier shall, from the Effective Date, provide the CHIEF / IES Test (LD1) infrastructure environment during the Term in accordance with the terms of this Agreement. As shown in the Technical Infrastructure the IES Test (LD1) infrastructure environment is made available as designed, built and configured as at the CAN CH00287 Effective Date of 1 July 2019 (including with its current Software products (which excludes Helmsman Software)).
- 9.2 If the Customer requires a different design, build or configuration of LD1 or any Changes to the Software products, such change(s) must be agreed between the Parties in accordance with the Change Control Procedure.
- 9.3 The Customer may at its own risk terminate use of the IES Test (LD1) infrastructure environment.
- 9.4 The Parties have previously contracted separately for Supplier Personnel and resources to be made available for use in conjunction with LD1. Such Additional Services are not in the base scope of this Agreement and if the Customer wants to use such personnel and resources after the Effective Date this will be on terms to be agreed between the Parties including additional Charges payable by the Customer. The rates shown in Annex 5-1 of Schedule 5 (**Charges**) shall apply unless otherwise agreed

## 10. SERVICE MANAGEMENT OF THE CHIEF INFRASTRUCTURE

- 10.1 The following table lists each of the service management disciplines and identifies who is responsible for delivering them and to what level.

- 10.2 The Element column describes the constituent of the CHIEF Service that is being delivered, and outlines: which of the Parties has responsibility for the full Service Element; or, which of the Parties has responsibility for the overall process of a Service Element that is a shared responsibility; or, where the Service Element is a shared responsibility without either of the Parties having responsibility for the overall process of that Service Element.
- 10.3 The Capability Unit / Service Delivery Unit column describes particular divisions that make up the Service Element in question.
- 10.4 The Owner column outlines which Party / Parties has / have responsibility for each division of a Service Element, where applicable.

| Element                                                                                             | Capability Unit / Service Delivery Unit        | Owner    |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------|----------|
| <b>Service Desk</b> – for which full responsibility is undertaken by the Customer                   | IT Service Centre (ITSC) – Clone/Live          | Customer |
|                                                                                                     | Aspire User Service Desk (AUSD) – Dev/Test     | Customer |
| <b>Incident Management</b> – process for which overall responsibility is undertaken by the Customer | IT Service Centre (ITSC)                       | Customer |
|                                                                                                     | Aspire User Service Desk (AUSD)                | Customer |
|                                                                                                     | Infrastructure Incidents                       | Supplier |
| <b>Problem Management</b> – process for which overall responsibility is undertaken by the Customer  | IT Service Centre (ITSC)                       | Customer |
|                                                                                                     | Infrastructure Problems                        | Supplier |
| <b>Change Management</b> – process for which overall responsibility is undertaken by the Customer   | Technical Infrastructure                       | Supplier |
| <b>Release Management</b> – for which full responsibility is undertaken by the Customer             | STS                                            | Customer |
| <b>Configuration Management</b> – for which full responsibility is undertaken by the Customer       | ACMS                                           | Customer |
| <b>Asset Management</b> – for which full responsibility is undertaken by the Supplier               | Supplier Asset management                      | Supplier |
| <b>Service Level Management</b> – for which the responsibility is shared by the Parties             | Customer Service Delivery Management           | Customer |
|                                                                                                     | Supplier Service Delivery Management           | Supplier |
| <b>Capacity Management</b> – process for which overall responsibility is undertaken by the Customer | Production of Charts and Annual Capacity Plans | Customer |
|                                                                                                     | Service Delivery Management - Infrastructure   | Supplier |

| Element                                                                                                       | Capability Unit / Service Delivery Unit | Owner                                                               |
|---------------------------------------------------------------------------------------------------------------|-----------------------------------------|---------------------------------------------------------------------|
| <b>Data Centre Disaster Recovery</b> – process for which overall accountability is undertaken by the Customer | Business Continuity Manager             | Supplier                                                            |
|                                                                                                               | Service Delivery Manager                | Supplier                                                            |
| <b>Availability Management</b> – process for which overall responsibility is undertaken by the Customer       | Technical Infrastructure                | Supplier                                                            |
| <b>Security Management</b> – for which the responsibility is shared by the Parties                            | Security Management                     | Both the Customer and the Supplier (in accordance with Schedule 12) |

## 11. CHIEF VPAAS SERVICES ENVIRONMENT REFRESH

- 11.1 The Parties have agreed that the CHIEF Application shall be refreshed and available for use on the MVE as part of the CHIEF VPaaS Services.
- 11.2 Subject to the Customer's compliance with its obligations and the Customer Dependencies, the Supplier shall ensure that the CHIEF Application to be refreshed shall be capable of operating on the MVE by the VPaaS Refresh Deadline.
- 11.3 The Supplier shall notify the Customer no later than 31 December 2021 if the Supplier reasonably believes that the VPaaS Environment Refresh for the CHIEF Application may be completed by the VPaaS Refresh Deadline. Where such anticipatory failure to complete the VPaaS Environment Refresh is due to Supplier Default and not any failure by the Customer to carry out the Customer Dependency:
- (a) the Supplier shall reasonably assist the Customer in developing an alternative approach to resolve the issue but other than VME Remediation; and
  - (b) subject to Section 10.10 of Schedule 5 (**Charges**), the Remediation Arrangement restriction set out in Clause 26.2(c) of the Terms and Conditions shall not apply.
- 11.4 The Parties agree that the Supplier shall not move the CHIEF Application onto the MVE if such move would result in a breach by the Supplier of its obligations under this Agreement.
- 11.5 If as a result of Supplier Default the Supplier is not able to complete the CHIEF VPaaS Environment Refresh prior to the VPaaS Refresh Deadline for the CHIEF Application, the Supplier shall continue to make available to the Customer the VPaaS Platform using VME until the CHIEF VPaaS Environment Refresh for the remainder of the Term, on the same terms and conditions as set out in this Agreement.
- 11.6 the Customer acknowledges and agrees that nothing in this Agreement shall have the effect of obliging the Supplier to continue to support the CHIEF Application after the VPaaS Refresh Deadline (i.e. 31 December 2022) if as a result of a Customer Default it has not been refreshed pursuant to the VPaaS Environment Refresh. In those circumstances the Availability of the CHIEF VPaaS Services may only be provided at

the Supplier's sole discretion after the VPaaS Refresh Deadline and the Customer accepts that they may no longer be provided for such application.

- 11.7 The Parties acknowledge that with respect to VPaaS Environment Refresh timescales for the CHIEF VPaaS Services and the relevant VPaaS Refresh Deadline (i.e. 31 December 2022), if the VPaaS Environment Refresh for the CHIEF / IES application is not completed by the VPaaS Refresh Deadline deadlines as a result of the Customer failing to provide a Customer Dependency or as a result of a Customer request then following the VPaaS Refresh Deadline the VPaaS Services shall only be available for the CHIEF Applications Running on VPaaS with the agreement of the Supplier (such agreement to be at the Supplier's sole and absolute discretion). The default position after the VPaaS Refresh Deadline is that no Services (other than the Modernisation Services) shall be available for: (i) a VPaaS No-Refresh Application; or (ii) for any Application Running on VPaaS which has not completed its VPaaS Environment Refresh by the VPaaS Refresh Deadline as a result of the Customer failing to provide a Customer Dependency or as a result of a Customer request. In either case such a result shall not operate to reduce any committed Charges which did not anticipate such a reduction in the Services.
- 11.8 The Customer has prior to the Effective Date earlier made a request for a delay to the performance by the Customer of work needed for the VPaaS Environment Refresh of the CHIEF Application refresh, and as a consequence the VPaaS Refresh Deadline has been re-set to 31 December 2022.
- 11.9 As a consequence of the reset the Parties acknowledge that this means that the activities needed to achieve the CHIEF VPaaS Refresh Deadline must be started immediately from the Effective Date onwards and that no further requests to delay the work needed shall be made.



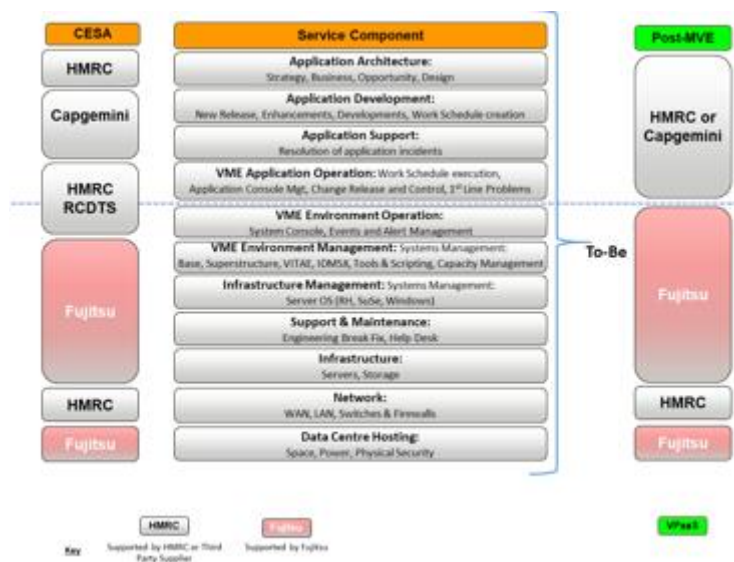
## **PART 4**

### **PRIME VPaaS SERVICES**

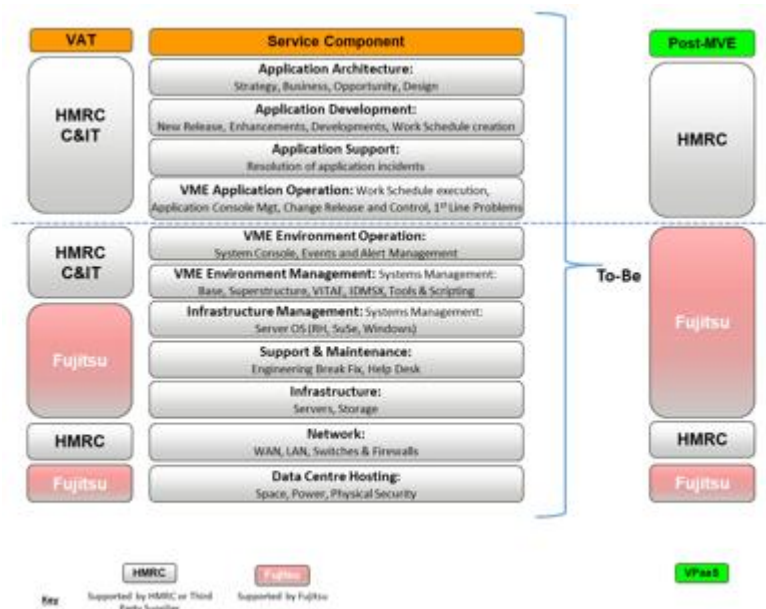
#### **1. INTRODUCTION**

- 1.1 This Part 4 of Schedule 2 sets out the scope of the Prime VPaaS Services to be provided by the Supplier and a description of each part of the Prime VPaaS Services to be provided broken down into the service elements to be provided by the Supplier and also the Customer.
- 1.2 The key elements of the Prime VPaaS Services that the Supplier shall be responsible for, subject to the terms set out in this Agreement (and the Customer's responsibilities), are:
- (a) Hosting of the VPaaS Platform(s) including space, power and physical security of the hosting environment;
  - (b) Infrastructure for the VPaaS Platform(s) including Servers, storage backup monitoring and alerting;
  - (c) Architecture and strategy input making available to the Customer the Supplier's expertise and consultancy concerning the evolution of the Customer's VME and MVE architecture and strategy;
  - (d) Support and maintenance of the Infrastructure provided for the Prime VPaaS Services including engineering break-fix;
  - (e) Infrastructure management being systems management for Server operating systems (VME and MVE; Linux and Windows);
  - (f) Environment management being systems management for VME /MVE, Superstructure, HostTalk (including VJC but not including the HostTalk runtime applications), VITAE and associated Tools and scripting; and
  - (g) Environment operations being systems console management, Events and Alert management will become the responsibility of the Supplier when moved to MVE.

## 1.3 Diagram 3 CESA Service elements and responsibilities before and after MVE:



## 1.4 Diagram 4 VAT Service elements and responsibilities before and after MVE:



1.5 The Supplier's Prime VPaaS Services provide a modern Platform, which is an environment for running, developing and testing the Customer's Prime VPaaS Applications.

1.6 The Supplier will deliver the following as part of the Prime VPaaS Services:

- (a) provision, hosting and operation of the Prime VPaaS Platform(s) for running the Prime VPaaS Applications, in accordance with Section 2 (VPaaS Platform) below;
- (b) the Prime VPaaS Ancillary Services, in accordance with Section 3 (Prime VPaaS Ancillary Services) below, which shall primarily provide a modern and configurable interface for the Customer to the Prime VPaaS Applications;
- (c) the Prime VPaaS Documentation and Collaboration portal, to provide Prime VPaaS Services related documentation;
- (d) Service Management, including Prime VPaaS Services usage reporting and the Prime VPaaS Resolver Group, in accordance with Section 1.4.4 (Prime VPaaS Service Management, Resolver Group and Reporting) below;
- (e) the Prime VPaaS Application Consultancy Services if requested by the Customer as set out at Section 1.4.8 (Prime VPaaS Application Consultancy Services) below, to contribute to the evolution of the Customer's Prime VPaaS Applications; and
- (f) the VPaaS Environment Refresh, in accordance with Section 5 (VPaaS Environment Refresh) below.

1.7 The VPaaS Services:

- (a) do not include the Exclusions; and
- (b) require the provision of the VPaaS Customer Dependencies.

## 2. VPAAS PLATFORM

- 2.1 The Supplier will provide and manage VPaaS Platform via the Prime VPaaS Service on which the Customer can run its Prime VPaaS Applications and develop and test its Prime VPaaS Applications. This shall include:
- (a) configuring, upgrading and patching of all technologies deployed for the VPaaS Platform; and
  - (b) the resolution of operational Incidents on the VPaaS Platform.
- 2.2 The VPaaS Platform shall be hosted in the Data Centres to provide:
- (a) a runtime environment in which to execute the Prime VPaaS Applications;
  - (b) VPaaS filestore and VPaaS virtual tape storage;
  - (c) a development and SysTest environment in which the Customer may develop and unit test the Prime VPaaS Applications; and
  - (d) an improved disaster recovery capability providing the Customer the opportunity of using synchronous disk replication between the Supplier's Data Centres will be available post migration to MVE.
- 2.3 The Supplier will provide, manage and upgrade as necessary the underlying infrastructure and system Software needed to provide the VPaaS environment including:
- (a) monitoring, investigation and resolution of operational problems with the VPaaS environment;
  - (b) console management for VPaaS once migrated to MVE; and
  - (c) VPaaS system management including system configuration and housekeeping.
- 2.4 The Supplier may, at its sole discretion, replace deployed technologies with alternative solutions where such replacement has no detrimental impact on the Customer or the functionality of the Prime VPaaS Applications or Prime VPaaS Service Levels.
- 2.5 The VPaaS Platform is monitored for Incidents 24 x 7 at a number of levels using a combination of automated vendor provided utilities, internally developed Tools and procedures and operations, system support specialists and diagnosticians.
- 2.6 As part of the VPaaS Platform, the Supplier shall provide the following Software products:
- (a) VPaaS Run-time

All supported VPaaS runtime products from the Supplier are deployed in each VPaaS Platform.
  - (b) VPaaS Development Tools

All supported VPaaS development tool products from the Supplier are deployed in each VPaaS Platform that is used for application development i.e. not on any system just used for production.

(c) Third Party Software

The Supplier may use Third Party Software to the extent necessary for the purpose of providing the Prime VPaaS Services.

### **3. PRIME VPAAS ANCILLARY SERVICES**

3.1 The Supplier will provide, host and operate a VPaaS Integration Platform.

3.2 As at the Effective Date, the solution implemented by the Supplier is the following:

- (a) a standard HostTalk application Platform;
- (b) Windows Server and IIS:
  - (i) HostTalk .NET Connector;
  - (ii) HostTalk VME Java Connector including Java Terminal Emulator and 7561 Service;
  - (iii) HostTalk WebTPMS; and
  - (iv) HostTalk Java Terminal Emulator configured to provide terminal access to the Customer's Prime VPaaS Applications.
- (d) The Supplier will provide, host, manage and upgrade as necessary the underlying infrastructure and Software needed to provide the VPaaS Integration Platform where such upgrade has no detrimental impact on the functionality of the Prime VPaaS Applications and Prime VPaaS Service Levels.
- (e) The Supplier may, at its sole discretion, replace the current VPaaS Integration Platform solution with an alternative solution where such replacement has no detrimental impact on the Customer or the functionality of the VPaaS Integration Platform.
- (f) Additional Storage

As part of the Prime VPaaS Services, the Supplier shall make available to the Customer Additional Storage on request through the Change Control Procedure.

### **4. VPAAS DOCUMENTATION**

4.1 The Supplier will provide access to VME related documentation through web browser access to an Internet-facing portal via https. Individuals must authenticate themselves before they can access the portal using a username and password.

4.2 Authenticated individuals can browse, search and view the documentation.

- 4.3 From the Effective Date, the Supplier shall provide access to VME related documentation and pursuant to this Section 4, the Supplier shall make available to the Customer any updates to such information arising as a result of the VPaaS Environment Refresh.

## **5. VPAAS SERVICE MANAGEMENT, RESOLVER GROUP AND REPORTING**

- 5.1 Service management shall be provided in accordance with the Prime VPaaS Service Levels.
- 5.2 In addition to the service management and information provided pursuant to the Agreement, in respect of the Prime VPaaS Services the Supplier shall also provide the reports set out in Schedule 9 (**Reporting**) and such other reporting metrics which may be provided by agreement between the Parties.
- 5.3 The Supplier will provide a resolver group for the Prime VPaaS Services which will provide specialist 3rd line support to the Customer's relevant Service Desk with respect to Prime VPaaS Services service delivery, change management and Incident management teams to deal with calls in relation to the Prime VPaaS Services.

## **6. VPAAS APPLICATION CONSULTANCY SERVICES**

- 6.1 On request of the Customer, the Supplier will provide additional consultancy to contribute to the evolution of the Customer's applicable application portfolio, as a Change or Project. The rates set out in the Rate Card at Annex 5-1 of Schedule 5 (**Charges**) shall apply to such services.
- 6.2 Prime VPaaS Application Consultancy Services include without limitation:
- (a) assessing the effect of change initiatives arising from a Project;
  - (b) providing estimates for proposed application Changes, and support models and arrangements (including as part of the Customer's digital initiative);
  - (c) detailing service improvement initiatives and developing Business Cases;
  - (d) establishing application change requirements and contributing to change governance processes; and
  - (e) delivering application change projects to enhance the Customer's VPaaS Refresh Applications.

## **7. VPAAS ENVIRONMENT REFRESH**

- 7.1 The VPaaS Environment Refresh shall be undertaken in accordance with Appendix B of this Schedule 2.
- 7.2 The Supplier shall be entitled to, without the Customer's consent, undertake the refresh of a VPaaS No-Refresh Application, if such refresh shall, in the Supplier's reasonable opinion and acting in good faith:
- (a) have no detrimental impact on the Customer or the functionality of the VPaaS Refresh Applications; and

- (b) facilitate or improve the operation of the Prime VPaaS Services, including in response to any VPaaS No-Refresh decision taken by the Customer which may have a consequential, detrimental impact on the VPaaS Refresh Applications.
- 7.3 The major tasks of the VPaaS Environment Refresh will be carried out by the Supplier, without any change to the Prime VPaaS Services or the Service Levels, but will require User Acceptance Testing to be performed by the Customer as indicated below before the VPaaS Environment Refresh can be deemed complete. To the extent the Customer requests support from the Supplier for the User Acceptance Testing, the Supplier shall provide additional resources at the VPaaS Rates. Apart from the provision of this testing support, there will be no additional charges for the VPaaS Environment Refresh.
- 7.4 Appendix B of this Schedule 2 sets out the methodology that will be used by the Supplier in undertaking the VPaaS Environment Refresh, including a description of the various phases of the refresh, and how an Application Running on VPaaS will be refreshed during the due diligence, refresh and testing phases.
- 7.5 The Customer must define the list of Prime VPaaS Applications that form the VPaaS Refresh Applications. All applications not in the VPaaS Refresh Applications are deemed to be in the VPaaS No-Refresh Applications list.
- 7.6 Refresh Conversion Analysis Service
- (a) Any Prime VPaaS Applications listed as VPaaS No-Refresh at the outset may be assessed by the Supplier at the request of the Customer subject to an additional charge as a Prime VPaaS Application Consultancy Service.
- (b) It should be noted that it may not be possible to convert a VPaaS No-Refresh Application to be MVE compliant in the time remaining before the VPaaS Refresh Deadline.

## 8. EXCLUSIONS

- 8.1 The following exclusions apply to the Prime VPaaS Services:

| Exclusions                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>General</b></p> <p>Hosting, operation or support of Servers other than VPaaS or VPaaS Integration Platform services is out of scope of this Service.</p> |

**PART 5****MODERNISATION SERVICES**

The Parties may agree Modernisation Services on a Project Basis and any that have general application will be referenced here and in Annex 2-5.



**PART 6****APPLICATION SERVICES**

The Parties may agree Application Services via the Change Control Procedure and any that have general application will be referenced here and in Annex 2-6.

**ANNEX 2-1****TECHNICAL INFRASTRUCTURE****1. TECHNICAL INFRASTRUCTURE****1.1 Changes to Technical Infrastructure**

- (a) The Parties acknowledge and agree that the Supplier may vary the Technical Infrastructure that provides the VPaaS Services from time to time. Any changes identified by the Supplier to maintain or improve the operational efficiency of the CHIEF VPaaS Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
  - (i) have an impact on the Customer;
  - (ii) require a Change to the Agreement;
  - (iii) have a direct impact on use of the CHIEF VPaaS Services; or
  - (iv) involve Customer in paying any additional Charges or other costs.
- (b) The Supplier shall maintain a record of the Technical Infrastructure which shall include details of the following:
  - (i) the details of the operational Technical Infrastructure change; and
  - (ii) time-scale for completion of the operational Technical Infrastructure change.
- (c) The CHIEF VPaaS Services and Prime VPaaS Services are configured as shown in the following schematic drawings which are provided for illustration purposes only:

***Redacted***

- (d) ***Redacted***

**1.2 Technology Roadmap and Technical Infrastructure**

- (a) In accordance with Schedule 9 (**Reporting**), the Supplier shall on request from the Customer provide the following:
  - (i) Technical Infrastructure deployed: an extract from its Asset database detailing the Technical Infrastructure deployed to deliver the VPaaS Services, versions (where applicable) and known end of support/end of life dates;

- (ii) VPaaS Service Offering Roadmap: details of future Supplier service offerings and technologies relating to the VPaaS Services together with their associated features and Availability dates; and
  - (iii) Supplier VPaaS Services technologies: the Supplier's roadmap for Supplier owned Tools and Assets,

(together the "**Technology Roadmap**").
- (b) If the Customer requests the Supplier to undertake any further work or analysis of the information provided, such effort shall be chargeable in accordance with Schedule 5 (**Charges**).
- (c) Any changes to the Technology Roadmap other than those already set out in this Agreement and other than changes pursuant to Section 1.1(a) above for operational purposes will be subject to the Change Control Procedure.
- (d) This Agreement reflects the outcome of several years during which the Customer and Supplier have considered the Technology Roadmap for the Services and in accordance with the same this Schedule sets out the agreed Technical Infrastructure and its evolution as the Parties move to using MVE.
- (e) Where the Parties wish to enter into New Services including Modernisation Services and Application Services they shall first define and agree any Technology Roadmap and Technical Infrastructure relevant to the same. For such Services the Supplier, in providing the VPaaS Services, shall conform to and shall support such architecture, standards, and strategic direction (to the extent made known to the Supplier by the Customer and, where relevant, addressed and implemented in accordance with Schedule 7 (**Change Control Procedure**)).
- (f) The Supplier shall implement and maintain throughout the Term (save as otherwise agreed between the Parties in accordance with the mechanisms set out in this Agreement) the Technical Infrastructure. The Supplier shall not however be obliged to maintain or upgrade the items of Technical Infrastructure on the *Redacted*.
- (g) Save as otherwise provided in this Agreement or as otherwise agreed by the Parties and subject to Schedule 13 (**Standards and Regulations**) and with the exception of Software or Equipment which forms, or is provided as part the VPaaS, the Supplier shall endeavour to use Open System Standards to provide the Services and shall ensure that it has access to, and can support, a wide range of third party technology products, Equipment and Software.

### 1.3 Systems Change Management

- (a) The Supplier shall carry out changes to the system and the Technical Infrastructure in accordance with this Schedule and where necessary Schedule 7 (**Change Control Procedure**) except in the case of a Supplier Initiated Change which shall be approved in accordance with Section 1.3(b) below.
- (b) For a Supplier Initiated Changes raised by the Supplier which impacts the Technical Infrastructure, the Supplier shall present the Customer with sufficient

detail to consider the approval of the Supplier Initiated Change, such approval not to be unreasonably withheld or delayed.

#### 1.4 Technical Governance

- (a) The Supplier's obligations in respect of its Technical Infrastructure are limited to those set out in this Schedule 2 (**Services**), this Annex (Technical Infrastructure) and Schedule 5 (**Charges**).
- (b) The Customer has responsibility for the transformation or refresh of its infrastructure other than the VPaaS Platforms and for decisions as to when to transform the same. Where a failure to do this results in an item being **Redacted** the consequences shall be those applicable to **Redacted** components
- (c) The Supplier shall provide information, as anticipated by this Agreement, to the Customer to enable the Customer to make decisions as to how to transform its estate.

#### 1.5 Management of the Technical Infrastructure

The Supplier shall:

- (a) identify and inform the Customer periodically of future technologies that would benefit the Customer in terms of business performance, cost, alignment with business strategy, new business opportunities and improved service;
- (b) promptly advise the Customer where it believes that technologies utilised in delivering the Services to the Customer are likely to become unsupportable by the marketplace and therefore may lead to ongoing sole reliance on the Supplier for support;
- (c) in respect of elements of the Technical Infrastructure under the Supplier's control, and subject to the Customer:
  - (i) commissioning projects to enable the refresh of Technical Infrastructure prior to such Technical Infrastructure reaching End Of Service Life; and
  - (ii) informing the Supplier of any application reliance on technologies and versions of technologies; and
- (d) ensure that the Technical Infrastructure in all locations remains efficient, reliable and serviceable.

**ANNEX 2-2****CHIEF VPaaS SERVICE DESCRIPTION MODULES**

The service modules applicable with variations to the various CHIEF VPaaS Services where shown in the various Parts of this Schedule.

**Operational CHIEF VPaaS Services**

OPS-01 Management & Administration  
OPS-02 Infrastructure (Hardware and System Software) Support and Maintenance  
OPS-03 Operations  
OPS-04 Change Management  
OPS-05 Data Centre Configuration Management  
OPS-06 Capacity Planning and Management  
OPS-07 Back-up & Recovery  
OPS-08 Database Support  
OPS-09 Messaging Support  
OPS-10 Maintain Operational Environment  
OPS-11 Batch Operations  
OPS-12 Security  
OPS-13 Disaster Recovery and Business Continuity  
OPS-14 Print Operations

**APP – CHIEF Applications Support Services**

APP-01 Incident Management  
APP-02 Major Incident Management  
APP-03 Root Cause Analysis  
APP-04 Problem Management and Resolution  
APP-05 Testing Support  
APP-06 Ad hoc Services

**SM CHIEF Service Management (SM)**

SM-01 Service Governance  
SM-02 Service Manager (SM)  
SM-03 Service Planning  
SM-04 Service Recording Monitoring and Reporting  
SM-05 Continual Service Improvement  
SM-06 System Configuration Management  
SM-07 Release Management  
SM-08 Change Management

**TPM – CHIEF Third Party Management**

TPM-01 Third Party Management

**EXM – CHIEF Exit Management**

## EXM-01 Exit Management

## DATA CENTRE OPERATIONS (OPS)

1. Section 3 below sets out details of the CHIEF VPaaS Services relating to Data Centre operational aspects of the CHIEF VPaaS Services.
2. Service Objectives: The Supplier shall maintain stable live, development and test environments, ensure that the live environment Technical Infrastructure is monitored and maintained in line with the applicable Service Levels and ensure that the requirements of Schedule 3 (**Security**) are not breached. The Supplier will undertake related corrective maintenance, ensuring that all problems are raised and logged centrally.
3. **OPS-01 MANAGEMENT & ADMINISTRATION**
  - 3.1 The Supplier will manage and administer the live, development and test environments as set out in the Agreement and in accordance with Schedule 4 (Service Measurement) as follows. The Supplier will:
    - (a) ensure that all products and Tools that support the relevant CHIEF Service comply with the Technical Infrastructure, the Standards, policies and procedures and applicable government regulations;
    - (b) subject to the Customer making available suitable times, ensure that back-up regimes do not compromise the agreed batch and on-line schedules for each of the applications supported;
    - (c) ensure co-ordination of Data Centre operations activities with the Customer and any relevant external third parties;
    - (d) design, supply or re-use and build the technology infrastructure components which will meet the functional requirements of the Technical Infrastructure;
    - (e) facilitate re-use and standardisation to comply with technical standards;
    - (f) pilot, integrate and install technology components ensuring that the new installation will not negatively impact the existing infrastructure;
    - (g) co-operate with internal and external Audits pursuant to the Agreement;
    - (h) provide physical access strategies and standards for all Data Centres;
    - (i) manage, prioritise and co-ordinate any appropriate improvement initiatives throughout the Data Centres;
    - (j) ensure compliance with a published quality assurance manual; and
    - (k) Audit quality processes to ensure compliance with the applicable Service Levels.

#### 4. **OPS-02 INFRASTRUCTURE (HARDWARE AND SYSTEM SOFTWARE) SUPPORT AND MAINTENANCE**

##### 4.1 The Supplier will provide the following support and maintenance in relation to the CHIEF Technical Infrastructure in accordance with Schedule 4 (**Service Measurement**):

- (a) maintain the Data Centre Technical Infrastructure in line with the manufacturer's guidelines and/or diagnostic recommendations to ensure that any unplanned disruption to the CHIEF VPaaS Services is minimised and that (in any event) all Service Levels are met;
- (b) design and plan the installation and/or removal and disposal of computer and environmental Equipment in all Data Centres;
- (c) perform impact assessments on the installation/removal of computer and environmental Equipment in all Data Centres including, environmental, live operations, space and power;
- (d) implement the installation and/or removal of computer and environmental Equipment in all Data Centres;
- (e) purchase approved computer and data communications Equipment and services in accordance with the Technical Infrastructure and including, but not limited to, data cabling within the Data Centre;
- (f) identify, assess the impact of, and prioritise preventative maintenance measures to maintain the efficiency and reliability of the Data Centre;
- (g) perform vendor recommended upgrades of firmware and/or diagnostic systems that improve performance and Availability of the hardware comprised in the Technical Infrastructure;
- (h) ensure that appropriately accredited engineering personnel are available to carry out installation/removal and maintenance activities;
- (i) agree and operate a schedule for carrying out maintenance on any hardware component or Equipment within the Data Centre including, but not limited to, power, generator, the Technical Infrastructure and fire suppression;
- (j) interface with the Customer and any third party hardware contractors for Data Centre planning and Problem resolution;
- (k) following systems maintenance, ensure that the systems are restored to operational state to ensure that the applicable Service Levels are met;
- (l) notify the Customer as soon as is reasonably practicable where any work on the Technical Infrastructure will impact the Availability of the VPaaS systems; and



- (m) the Customer will inform the Supplier of any the Customer-owned or the Customer-leased hardware and Equipment, the use of which is necessary to allow the Supplier to provide the Services, and will discuss with the Supplier any impact that the use of such the Customer-owned or leased hardware and Equipment could have on the Supplier's provision of the Services.

## 5. OPS-03 OPERATIONS

### 5.1 The Supplier shall, in the context of the data centre operations:

- (a) operate the Services in accordance with any service management manual agreed in writing between the Parties;
- (b) manage and operate the Supplier inputs within the Data Centre including monitoring of alarm systems and environmental controls. This shall include logging all faults identified on the services it monitors using the Tools and in the form reasonably required to deliver the Services;
- (c) enable remote access to the Supplier systems by any third parties but only by prior written agreement of the Customer and provided always that any such access is only provided in accordance with the Security Policy unless other instructions are given by the Customer;
- (d) assign and initialise direct access storage volumes;
- (e) provide and prepare all media used internally and for external third party testing;
- (f) record accurately receipt / despatch of all media processed during processing and operations activity;
- (g) test media where appropriate, successfully process in accordance with any agreed time scales and return to the Customer;
- (h) manage data set and volume placement (excluding databases);
- (i) maintain the integrity of development, test, live and quality assurance environments;
- (j) install, test, execute, monitor, maintain and tune the operating system Software;
- (k) execute all system start-ups and fallbacks for scheduled and unscheduled outages;
- (l) maintain and control all Data Centre technical documentation;
- (m) document and update all operations procedures and services that form part of the relevant aspects of the Services;

- (n) perform the extraction and collation of documentation (e.g., data displays, audit logs) as initiated or agreed by the Customer;
- (o) provide specialised operations support to major system requirements and Implementations as set out in this Schedule;
- (p) provide technical advice and support to applications maintenance and development staff;
- (q) install, tailor and maintain system Software products;
- (r) plan implementation of all new elements of the CHIEF VPaaS Services, advising the Customer of any impact on the infrastructure or any aspect of the CHIEF VPaaS Services, including the Availability of the CHIEF IES System;
- (s) install Software products (e.g. where physical access (not logical access) is required);
- (t) provide technical assessment and Impact Analysis on issues concerning the Supplier's systems' operability within the overall Technical Infrastructure;
- (u) monitor and manage all Equipment in line with the applicable Service Levels;
- (v) provide regular and ad-hoc system reports in accordance with this Agreement or as otherwise agreed with the Customer; and
- (w) maintain Data Centre space requirements according to Supplier and the Customer forecasts. The Customer will provide such forecasts at least monthly.

## 6. **OPS-05 DATA CENTRE CONFIGURATION MANAGEMENT**

### 6.1 The Supplier shall, in connection with the data centre operations:

- (a) maintain a consistent naming convention for all Equipment that is compliant with the Customer and industry standards; and
- (b) provide reasonable assistance to the Customer to enable the Customer to maintain a definitive Software library in respect of the CHIEF IES Systems and CHIEF VPaaS Services to include all:
  - (i) technical documentation;
  - (ii) live, archived and test version numbers;
  - (iii) database definitions;
  - (iv) utilities; and
  - (v) procedures.

## 7. OPS-06 CAPACITY PLANNING AND MANAGEMENT

7.1 The Supplier shall, in connection with the data centre operations:

- (a) provide reasonable assistance to the Customer to enable the Customer to monitor and analyse the usage of the VPaaS systems against the volumetrics agreed pursuant to this Agreement;
- (b) provide reasonable assistance to the Customer to enable the Customer to include usage trend information in the service reports so that future Changes to the system capacity that may be required can be anticipated and planned for Implementation before the existing capacity is exhausted. For the avoidance of doubt it is for the Customer to manage system capacity against its anticipated needs and to provide the Supplier with regular Monthly forecasts of the Customer's anticipated capacity requirements;
- (c) if requested by the Customer, increase the capacity, where reasonably possible, of the Technical Infrastructure in excess of the existing size in accordance with the Change Control Procedure;
- (d) forecast future resource and requirements;
- (e) provide reasonable assistance to the Customer in developing capacity plans in line with the provisions for technology refresh in this Schedule, showing what capacity will be needed in the future and what it will cost;
- (f) provide reports to include how resources are used, peaks and troughs, trends and performance improvement options; and
- (g) balance demand and resource usage in order to ensure that the Service Levels are achieved in the most cost effective manner; taking into account the Charging options selected by the Customer as set out in Schedule 5 (**Charges**).

## 8. OPS-07 BACK-UP & RECOVERY

8.1 The Supplier shall, in connection with the data centre operations:

- (a) make data back-ups and implement a data recovery process, details of which will be agreed with the Customer and set out in any agreed service management manual;
- (b) operate and support media management systems, tape library operations, shipping and receiving of tapes to and from off-site facilities;
- (c) ensure that back-ups are carried out as appropriate before major Changes to a system's Technical Infrastructure;
- (d) restore lost or damaged files as required by the Customer from its back ups or those available to the Customer;

- (e) carry out replacements of back-up media in line with the manufacturer's guidelines and/or diagnostic information produced as a result of back-up and restore processes;
- (f) ensure that back-up retention periods are in line with any documented Customer requirements and or the Customer regulatory and internal policy requirements;
- (g) advise the Customer of the current or future enhancements in back-up media and device capacity, performance, reliability and cost; and
- (h) advise the Customer on current and future back-up of Software enhancements and functionality.

8.2 For the CHIEF IES System, the Supplier will:

- (a) operate a data back-up and recovery service for all CHIEF VPaaS Services Data Centre Equipment in accordance with the applicable Service Levels;
- (b) maintain the integrity of the data transmitted across the Data Centre automated link for disaster recovery purposes;
- (c) ensure that data restore is tested on a regular basis to verify the integrity of back-ups and back-up media;
- (d) make historical data available to Users in accordance with individual system requirements and Schedule 9 (Reporting) subject to the provisions of Schedule 12 (Security); and
- (e) maintain documentation and plans to enable full recovery of all infrastructure Equipment in the event of a significant degradation of facilities.

9. **OPS-10 MAINTAIN OPERATIONAL ENVIRONMENT**

9.1 The Supplier shall, in connection with the data centre operations maintain the CHIEF VPaaS Services operational environments (which will include the live, development and test environments as set out in the supplier's Systems Architecture Document document) and will:

- (a) allocate space and maintain access to all hardware in accordance with manufacturer's guidelines, security and health and safety policies;
- (b) take corrective action where and when such policies are not fully complied with;
- (c) ensure that operational procedures are developed, maintained and enforced with adequate controls and Audit trails and respond to security violations and breaches;
- (d) inform the Customer if the operational environment in any the Customer accommodation is unsuitable and action is required;

- (e) maintain Supplier's building electrical systems, heating ventilation and air conditioning and monitoring systems; and
- (f) provide and operate the facilities needed for the Data Centre to perform secure and protected computer operations including provisions for: UPS, generator-power back-ups, fire suppression services, heating, ventilation, air-conditioning, physical security devices and power isolation and conditioning services.

## 10. **OPS-12 SECURITY**

### 10.1 The Supplier shall, in connection with the data centre operations:

- (a) on request, prepare and implement a security plan (which aligns with the security requirements in Schedule 12 (**Security**)) and provide reasonable assistance to the Customer in relation to Schedule 12 (**Security**);
- (b) proactively monitor, for all Data Centre Equipment, security vulnerabilities and promptly apply any configuration Changes, patches or fixes to close the vulnerability and protect the Customer against any associated security threats;
- (c) maintain a register of all Supplier Personnel who have privileged or administrative access to the Data Centre or to Data Centre infrastructure;
- (d) ensure appropriate confidentiality of data at all times in accordance with Schedule 12 (**Security**);
- (e) provide a single point of contact to respond to the Customer sensitive/secure account issues ensuring that Supplier Personnel involved receive appropriate security clearance; and
- (f) provide reasonable assistance to the Customer to support the Customer to obtain the authority of the appropriate Data owner before performing any data extraction for external use. The Customer will provide reasonable facilities for the secure disposal of the Supplier's confidential hard-copy documents in relation to the Services at all the Customer Premises from which the CHIEF VPaaS Services are provided by the Supplier.

### 10.2 TFor the avoidance of doubt, it is assumed that the Protective Marking of the Customer Data and any other data for which the Supplier is responsible (in whole or in part) will not exceed OFFICIAL (SENSITIVE) COMMERCIAL.

## 11. **OPS-13 DISASTER RECOVERY AND BUSINESS CONTINUITY**

### 11.1 The Supplier shall, for the CHIEF IES System in connection with the data centre operations:

- (a) commencing on the Effective Date, commence implementation of a Business Continuity Plan and Disaster Recovery Plan in accordance with this Agreement;

- (b) co-operate fully with the Customer at the Customer's direction in the testing of the Business Continuity Plan and the Disaster Recovery Plan; and
- (c) ensure that sufficient copies of the most current version of the Customer-approved Business Continuity Plan and the Disaster Recovery Plan are provided to the appropriate personnel of the Supplier and the Customer.

## **VME APPLICATIONS SUPPORT SERVICES**

- 12. The following sections set out details of the services relating to the CHIEF Application support aspects of the CHIEF VPaaS Services.
- 13. Note: Application support is outside the scope of this Agreement, being provided to the Customer under other contractual arrangements with third party contractors and the following application support services must be read subject to the foregoing.
- 14. Service Objectives: The Supplier shall provide application support to the CHIEF IES System, in accordance with the obligations and responsibilities set out below, working as necessary with the Customer and its third parties.

### **15. APP-01 INCIDENT MANAGEMENT**

- 15.1 The Customer Service Desk is the single point of contact for Incident reception and will manage the resolution of Incidents.
- 15.2 For Incident management:
  - (a) the Customer will filter User queries, requests for information, technical queries and Incidents in relation to the CHIEF VPaaS Services and the CHIEF IES Systems through to the Customer's Third Party Service Desk for any application for which the Customer is providing the 1st Line support pursuant to this Agreement; and
  - (b) the Customer will confirm that individual Incidents that have been resolved in accordance with the agreed criteria should be closed.
- 15.3 Where requested, the Supplier will provide all reasonable assistance to the Customer to determine the root cause of Incidents and Problems.
- 15.4 The Supplier will be responsible for the management and resolution of all infrastructure related Incidents and Problems.

### **16. APP-02 MAJOR INCIDENT MANAGEMENT**

- 16.1 The Supplier will provide all reasonable assistance to the customer to enable the Customer to:
  - (a) manage the agreed process for Major Incident Management as set out in any agreed Service Management Manual;
  - (b) implement the Major Incident Management process such that it supports the Major Incident Management objectives and policy; and

- (c) thereafter continually review the process and Tools for effectiveness and identify any improvements where they exist.
- 16.2 The Supplier shall consult with the Customer in relation to Major Incident Management and the Customer will, in connection with such consultation:
  - (a) without detracting from the Supplier's obligations to resolve any Incident, assist with Major Incident Management;
  - (b) communicate major Incident impact and progress to the Customer;
  - (c) provide input into suggested resolution and recovery if appropriate; and
  - (d) participate in post-Incident review, if required.

## 17. **APP-03 ROOT CAUSE ANALYSIS**

- 17.1 The Supplier will analyse reported P1 infrastructure Incidents to determine the root cause of those Incidents and shall provide recommendations to the Customer to ensure any Infrastructure related Incidents or Problems do not re-occur.

## 18. **APP-04 PROBLEM MANAGEMENT AND RESOLUTION**

- 18.1 The Supplier will:
  - (a) manage the progression of, and the resolution of, infrastructure related Problems identified in connection with an Incident or identified as a result of routine operational analysis through to resolution as set out in any agreed service management manual;
  - (b) engage and provide all reasonable assistance to the Customer, as appropriate, in:
    - (i) Problem control – focusing on transforming Problems into Known Errors;
    - (ii) Problem identification and recording;
    - (iii) Problem classification to ensure resources are prioritised to resolve Problems in the most appropriate order based on business need;
    - (iv) Problem investigation / root cause analysis ("RCA") and diagnosis;
    - (v) error control following RCA – focusing on resolving Known Errors via the Change Control Procedure;
    - (vi) error identification and recording;
    - (vii) error assessment;
    - (viii) recording error resolution;
    - (ix) error closure;

- (x) monitoring resolution progress;
  - (xi) carrying out review & RCA of Priority 1 Incidents and making recommendations on how to prevent re-occurrence;
  - (xii) identification of Problems and Known Errors before the point at which they cause disruption or risk to the Customer business; and
  - (xiii) trend analysis to identify beneficial Changes that will improve the service;
  - (c) advising the Customer on methods which it can use to encourage Incident prevention and impact limitation; and
  - (d) obtaining management information from Problem data and reporting appropriately to the Customer any relevant findings and recommendations.
- 18.2 The Supplier shall consult with the Customer in relation to infrastructure related Problem Management and the Customer will, in connection with such consultation:
- 18.3 without detracting from the Supplier's obligations to resolve any Problem, assist with Problem investigation;
- (a) provide input into suggested Problem resolution decisions, if appropriate;
  - (b) advise on any suitable business process work round procedures;
  - (c) communicate resolution to the Customer's business, including work round procedures; and
  - (d) where a fix has successfully resolved a Problem, confirm that it has done so.

## 19. **APP-05 TESTING SUPPORT**

- 19.1 The Supplier will provide all reasonable support for the testing environment so that the Customer may test any resolution to reported Problems prior to its implementation.

## 20. **APP-06 - NOT USED**

## **SERVICE MANAGEMENT (SM)**

21. Service Objectives: The Supplier shall provide service management to ensure that the CHIEF VPaaS Services are provided in accordance with this Agreement, including in relation to Subcontractors and any service improvement during the Term.
22. The Supplier shall provide all reasonable assistance to the Customer in the ownership of the assessment and management of operational risks to the CHIEF VPaaS Services, the live environment and the protection of the live environment.
- ## 23. **SM-01 SERVICE GOVERNANCE**
- 23.1 The Supplier will in respect of this aspect of service management of the CHIEF VPaaS Services comply with its obligations as set out in Schedule 8 (**Governance**) and monitor the operation of the governance process as set out in Schedule 8



(**Governance**) to ensure that such process continues to operate and meet the needs of the Customer; and provides suitable, timely and accurate information regarding business impact for Incidents, business events and outages.

## 24. **SM-02 SERVICE MANAGER (SM)**

### 24.1 The Supplier will:

- (a) appoint a service manager or service managers who will be responsible for the Supplier's delivery of CHIEF VPaaS Services and who shall act as a single point of contact in relation to each of the CHIEF VPaaS Services;
- (b) set up a service management function to ensure:
  - (i) proactive management of all aspects of the CHIEF VPaaS Services from the Effective Date to the termination or expiry of this Agreement;
  - (ii) end-to-end minimisation of risks to the CHIEF VPaaS Services from the impact of any agreed Change;
  - (iii) development, formalisation and maintenance of the relationship between the Supplier's Incident management team and the Customer via joint governance meetings that have agreed terms of reference;
  - (iv) end-to-end operation of the service management so as to consider improvements in how the CHIEF VPaaS Services are delivered;
  - (v) management of contractual performance against the CHIEF VPaaS Service Levels;
  - (vi) adopt service management policy including the policy for service management processes;
  - (vii) adherence to Major Incident Management process; and
  - (viii) that it provides the role of "internal customer" to the Supplier's service delivery managers within each of the Supplier's CHIEF VPaaS Services delivery units.

## 25. **SM-03 SERVICE PLANNING**

### 25.1 The Supplier will provide reasonable assistance to the Customer in the creation and maintenance of an operational service plan on a monthly basis. for the CHIEF VPaaS Services, based on information provided across the delivery organisation and in accordance with the Parties' obligations in respect of reporting set out in Schedule 9 (**Reporting**), including:

- (a) service description providing an overview of the service;
- (b) the Customer's Forward Schedule of Change for the CHIEF VPaaS Services including annual/periodic requirements or enhancements, new related projects and any scheduled maintenance;

- (c) risks and issues impacting the CHIEF VPaaS Services;
- (d) opportunities for improvement;
- (e) Service Level Information;
- (f) details of performance against the CHIEF VPaaS Service Levels;
- (g) operational process information on Incidents, Problems (which may lead to improvements), Changes (via CABs), Releases, Capacity and Availability (may lead to improvements);
- (h) active continual improvements in progress; and
- (i) provide reasonable assistance in a timely manner (but in all cases at least five (5) Working Days prior to the Monthly Service Review Meetings) such that no delay will be caused to the provision of the relevant service plans to the Customer.

## 26. **SM-04 SERVICE RECORDING MONITORING AND REPORTING**

- 26.1 The Supplier will monitor the CHIEF VPaaS Services.
- 26.2 The Supplier's CHIEF VPaaS Services monitoring will record and report on capacity, performance and Availability as set out in Schedule 4 (**Service Measurement**), using the Tools and in the form required by the Customer.
- 26.3 The Supplier will provide Incident and fault resolution logs in a format suitable for subsequent analysis by the Customer.
- 26.4 The Supplier will utilise the service reporting function to provide a support role for the Supplier's Service Manager to meet the Customer's requirement for standard, timely and consistent information and to collect, analyse and report on the information provided by the relevant Tools used to manage the CHIEF VPaaS Services.
- 26.5 The Supplier shall produce agreed reports in relation to the CHIEF VPaaS Services to the agreed timetable for the Services review meetings pursuant to Schedule 8 (**Governance**).

## 27. **SM-05 CONTINUAL SERVICE IMPROVEMENT**

- 27.1 The Supplier will provide reasonable assistance to the Customer in developing and implementing a Continuous Service Improvement Programme ("CSIP"), as set out in any agreed Service Management Manual.
- 27.2 The CSIP will follow good practice agreed between the Customer and the Supplier and will fulfil the Supplier's obligations under the Agreement for any agreed improvements.
- 27.3 The Supplier will provide reasonable assistance to the Customer to enable the Customer to:
  - (a) define and implement the CSIP to plan out the delivery of the CHIEF VPaaS Services in accordance with this Agreement and the items in the service plan;

- (b) define and implement the "Do" element to deliver the CHIEF VPaaS Services (e.g., via the Incident and Problem resolution processes and in accordance with the Change Control Procedure) and any improvements contained in the service plan;
- (c) define and implement the "Review" element via joint governance to review the operational performance of the CHIEF VPaaS Services and the effectiveness of completed improvements and identify what further actions are required including any investment recommendations to the Customer that may be needed to improve the CHIEF VPaaS Services;
- (d) define and implement an improvement process including what will be shared with the Customer, when and how it will be shared, identification of improvement opportunities, evaluating opportunities, commissioning improvements and other steps through to finally tracking the delivered benefits; and
- (e) thereafter perform service improvement as set out above throughout the Term.

## 28. **SM-06 SYSTEM CONFIGURATION MANAGEMENT**

28.1 The Supplier shall provide reasonable assistance to the Customer to:

- (a) define the operating policy for configuration management that each of the CHIEF VPaaS Services delivery units should adhere to;
- (b) define and implement the configuration management process such that it supports the configuration management objectives and policy;
- (c) ensure that the configuration management process will support the regress of Changes; and
- (d) define and implement Changes required to service management Tools in order to support the configuration management process and the associated management information requirements.

## 29. **SM-07 RELEASE MANAGEMENT**

29.1 The Supplier will provide reasonable assistance to the Customer to enable the Customer to develop a Release Policy.

29.2 The Supplier will provide reasonable assistance to the Customer in planning of Releases.

29.3 Configure Release: The Supplier will provide reasonable assistance to the Customer to enable the Customer to carry out the following activities:

- (a) for the relevant VPaaS system, provide version controlled application Software; and

- (b) compile the Release by using standard procedures to extract the Release components (application modules, databases, data feeds etc.) from the appropriate sources and compile them into a new entity (being the Release).
- 29.4 Distribution and Installation: The Supplier will provide reasonable assistance to the Customer to enable the Customer to:
- (a) execute the Release and deployment plan as documented and agreed including sign-off;
  - (b) if the Release fails, then execute the back-out plan to ensure that the earlier version is installed and operations continue; and
  - (c) in case of failures during the course of the deployment, review what went wrong and adapt the Release, script, tests or plan accordingly returning to the relevant step in the process.

### 30. **SM-08 CHANGE MANAGEMENT**

30.1 The Supplier will comply with the Change Control Procedure and, in pursuit of the objectives below, undertake the respective tasks as set out there under, as follows:

- (a) Change Management Function and Governance
  - (i) In accordance with Schedule 8 (**Governance**), create an operational change team to ensure the Change Control Procedure is followed and to ensure accurate Records of all Changes are maintained and that all management information is accurate; and
  - (ii) Provide representation at Change Advisory Boards (CABs).
- (b) Policy
  - (i) Provide reasonable assistance to the Customer to define the operating policy for operational change management; and
  - (ii) Thereafter ensure change management governance team members implement the policy.
- (c) Process and Tools
  - (i) Utilise service management Tools in order to support the change management process and the associated management information requirements.
- (d) Reporting
  - (i) Agree a set of reports (in accordance with Schedule 9 (**Reporting**)) to provide the required management information needed by the Customer for understanding and managing Changes by service and Changes across the live environment; and

- (ii) provide reasonable assistance to the Customer to produce a Forward Schedule of Change on a regular basis as required by governance groups.

30.2 The Supplier's Change Management process will be set out in any agreed Service Management Manual.

### 31. **THIRD PARTY MANAGEMENT**

31.1 Service Objectives: The Supplier shall effectively manage engagements of all Subcontractors involved in the delivery of the CHIEF VPaaS Services.

### 32. **TPM-013 THIRD PARTY MANAGEMENT**

32.1 The Supplier will, in relation to all Subcontracts be responsible for the management of its Subcontractors in the delivery of the CHIEF VPaaS Services and engage with the Customer or its agents as agreed to deliver the CHIEF VPaaS Services.

## **EXIT MANAGEMENT**

### 33. **EXM-01 EXIT MANAGEMENT**

The Supplier shall provide exit management in accordance with its obligations under this Agreement on exit.

**ANNEX 2-3****CUSTOMER DEPENDENCIES****1. GENERAL**

- 1.1 The Customer Dependencies set out in this Agreement and in this Schedule detail the actions the customer shall take to enable the supplier to deliver the Services.

**2. GENERAL CUSTOMER DEPENDENCIES**

2.1 The Customer shall:

- (a) in a timely manner, review, agree and approve the relevant activities, procedures, decisions, plans, designs and/or specifications (that have been submitted to the Customer by the Supplier pursuant to the relevant business requirement in this Schedule 2) in accordance with the Customer's responsibilities as set out in this Schedule 2 (save that the Parties agree that notwithstanding the generality of the foregoing and/or any responsibility specified as a Customer responsibility in this Schedule 2 that requires the Customer to agree, approve or sign-off on a matter proposed or provided by the Supplier, including but not limited to any plan, design, specification, project or proposal submitted by the Supplier, such agreement by the Customer shall be subject to the relevant matter being acceptable to the Customer, any acceptance criteria that are required to be met or any process that is required to be completed before such matter is agreed, approved, or signed-off);
- (b) respond promptly to all reasonable requests for information raised by the Supplier;
- (c) participate in processes and activities that are to be carried out jointly by the Parties, as described in this Schedule 2 (**Services**);
- (d) identify the relevant point of contact within the Customer who are the interfaces with the Supplier's point of contacts;
- (e) consider and where acceptable approve procedures and plans submitted by the Supplier within the timescales agreed by the Parties;
- (f) ensure the appropriate Customer personnel attend meetings relating to the Services under this Schedule 2 (**Services**), as applicable;
- (g) provide input where appropriate relating to the Customer's business continuity requirements as requested by the Supplier;
- (h) provide indicative business growth forecasts including data volumes and business change as requested by the Supplier;

- (i) in accordance with Schedule 12 (**Security**), provide the relevant access to the Supplier's engineers executing their required tasks as required under the Agreement; and
- (j) without prejudice to the Supplier's obligation to comply with the relevant standards, policies and procedures set out in this Agreement, the Customer shall promptly update the Supplier regarding policy, process and standards changes from the Customer and other Government Departments.

### 3. **CUSTOMER DEPENDENCIES FOR CHIEF VPAAS SERVICES**

#### 3.1 **General**

#### 3.2 The Customer shall:

- (a) perform those obligations on it which are set out in this Agreement;
- (b) report to the Supplier on the service Availability of the CHIEF IES System;
- (c) if any of the CHIEF VPaaS Services or any other obligation of the Supplier under this Agreement is stated to require input from Customer or interface with the Customer, provide the Supplier with reasonable access to appropriate members of the Customer's staff, as such access is reasonably requested by the Supplier and necessary in order for the Supplier to comply with its obligations under this Agreement;
- (d) provide sufficient and suitably qualified staff to fulfil the Customer's roles and duties under this Agreement;
- (e) if any of the CHIEF VPaaS Services or any other obligation of the Supplier under this Agreement is stated to require Customer documentation, data and/or other information, provide the Supplier with such documentation, data and/or other information that the Supplier reasonably requests and that is necessary in order for the Supplier to comply with its obligations under this Agreement;
- (f) if any of the CHIEF VPaaS Services or any other obligation of the Supplier under this Agreement is stated to require agreed use of Customer's premises, facilities, and any relevant part of the Customer System, procure for the Supplier such agreed use of the Customer's premises, facilities, and any relevant part of the Customer System, as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during Customer's Normal Working Hours on each Working Day or otherwise as agreed by Customer (such agreement not to be unreasonably withheld or delayed);
- (g) where this Agreement requires, or the Supplier otherwise reasonably requests, Customer's input into the development of such documents and processes required to define the CHIEF VPaaS Services which are to be

produced and/or developed by the Supplier, provide such input as is reasonably necessary; and

- (h) if there are to be any planned dates or periods on which Customer is aware that the installation of new Releases of Software, commissioning of new hardware elements or the implementation of changes to the CHIEF IES System (or the performance of other obligations upon the Supplier under this Agreement) will not be possible or permitted for Customer policy reasons (including due to an Customer planned outage for the purposes of systems maintenance, upgrades or other such similar purposes), Customer will promptly notify the Supplier of such planned date or period ("**Freeze Period**") and the Parties will discuss and agree (prior to the occurrence of the Freeze Period) pursuant to the Change Control Procedure set out in Schedule 7 (**Change Control Procedure**): (a) the extent, timing and duration of such Freeze Period, and (b) the precise consequences of such Freeze Period.

### 3.3 VPaaS Environment Refresh Dependencies

- (a) In order for the Supplier to complete the VPaaS Environment Refresh, Customer shall pursuant to the operational change management procedure:
  - (i) procure and support the removal of OSI. Customer shall not be responsible if a breach of this Agreement by the Supplier prevents or delays such removal; and
  - (ii) agree to the final switch to MVE as set out in the Environment Refresh Methodology within such reasonable period of time as will allow the switch to MVE prior to the VPaaS Refresh Deadline.

### 3.4 VPaaS Environment Refresh

- (a) Grant the Supplier access on reasonably agreed terms to the Source Code and/or object code of the CHIEF IES System where appropriate for the purposes of the VPaaS Environment Refresh.
- (b) Ensure that the appropriate personnel are available for the activities described in the VPaaS Environment Refresh.
- (c) Customer shall be responsible for any application change in the event that a change is required, along with any Changes required to any Customer Software that also requires a change in order to ensure that it operates satisfactorily on the MVE.
- (d) In the event that the Supplier does not have timely access to the Source Code and/or object code (as appropriate), Customer shall be responsible for ensuring that the VME Applications that VPaaS Refresh Applications can operate satisfactorily on the MVE.

### 3.5 CHIEF IES System and Integration Platforms



- (a) The Customer shall agree in accordance with the Maintenance Schedule set out in Schedule 4 (**Service Measurement**) to scheduled outages to allow for necessary maintenance and upgrade activities to be carried out by the Supplier, provided the Supplier provides reasonable advance notice of such outages to Customer and such outages will not have a detrimental impact on the functionality of the CHIEF IES System. Such outages will count as agreed outages and therefore will be disregarded when measuring service performance and calculation of Service Credits pursuant to Schedule 4 (**Service Measurement**).
- (b) Customer must ensure that any Third Party Software which it (or its agents) procures in support of the CHIEF IES System remains within the terms of its applicable licence agreements.

### 3.6 TPMS Update

- (a) The Customer shall Move TPMS from version 520 to version 640 on or before 31 December 2020.

## 4. CHIEF APPLICATION INFORMATION LIST

### 4.1 The Customer shall provide the following information in respect of the CHIEF Application:

- (a) Brief Overview: Please provide a short (~50 words) overview or description of what the CHIEF Application does.
- (b) Complexity: Please provide a short explanation of the Customer's view as to the complexity of the CHIEF Application.
- (c) Please provide details of the technologies involved, including the languages used in the code.
- (d) Interfaces employed: Please describe the main input and output interfaces that will assist the Supplier in understanding connections with other applications or services.
- (e) IPR: Please confirm the Customer owns or has all necessary Intellectual Property Rights required to amend the CHIEF Application.
- (f) Application support: Please provide details of the Customer teams or external suppliers of application services responsible for maintaining and supporting the CHIEF Application and whether such teams or suppliers retain the people who understand this application and can support it.
- (g) Out of Support: Please provide details of whether the CHIEF Application, or any elements of the CHIEF Application are no longer supported.
- (h) History: Please provide details of when the CHIEF Application was originally written and of any major changes and confirm whether it is still actively maintained, developed and supported. Actively maintained in this context

means that the code is regularly reviewed and redundant or unused code is considered for removal.

- (i) Code: Please confirm approximately how many lines of code there are in the IES Application. Please confirm if the Source Code exists and if it can be mapped to object code.
- (j) Other: Please confirm that there is no application code or application required for operating the CHIEF Application.

## 5. CUSTOMER DEPENDENCIES IN RESPECT OF PRIME VPaaS SERVICES

### 5.1 The Customer shall meet the following Customer Dependencies:

- (a) VPaaS Environment Refresh
  - (i) Grant the Supplier access to the Source Code and/or object code of the Prime VPaaS Applications where appropriate for the purposes of the VPaaS Environment Refresh.
  - (ii) Ensure that the appropriate personnel are available for the activities described in the VPaaS Environment Refresh.
  - (iii) Customer shall be responsible for any application change in the event that a change is required.
  - (iv) In the event that the Supplier does not have timely access to the Source Code and/or object code (as appropriate), the Customer shall be responsible for ensuring that the VPaaS Refresh Applications can operate satisfactorily on the MVE.
- (b) Prime VPaaS Applications And VPaaS Integration Platforms
  - (i) Agree to scheduled outages to allow for necessary maintenance and upgrade activities to be carried out by the Supplier, provided the Supplier provides reasonable advance notice of such outages to the Customer and such outages will not have a detrimental impact on the functionality of the Prime VPaaS Applications. Such outages will count as agreed outages pursuant to Schedule 4 (**Service Measurement**).
  - (ii) Provide the Customer workplace for the End-Users which provides them a workplace with a device capable of providing access to the VPaaS Applications.
  - (iii) Deploy any client-side components to the workplace devices required by the VPaaS Applications.
  - (iv) The Customer must ensure that any Third Party Software which it (or its agents) procure in support of their Prime VPaaS Applications remains within the terms of their applicable licence agreements.

- (c) Architecture and Strategy Meetings
  - (i) Provide the attendees needed at the meetings defined in Section 4 (Regular Review Meetings) of Schedule 2 – Part 4 (**Prime VPaaS Services**)

## 6. **PRIME VPAAS SERVICES - APPLICATION INFORMATION LIST**

6.1 The Customer shall provide the following information in respect of each of the Prime VPaaS Applications in Appendix A to this Schedule.

- (a) Application Name: Please list the applications by the name used to identify them.
- (b) Brief Overview: Please provide a short (~50 words) overview or description of what each application does.
- (c) Complexity: Please provide a short explanation of the Customer's view as to the complexity of each application.
- (d) Please provide details of the technologies involved, including the languages used in the code.
- (e) Interfaces employed: Please describe the main input and output interfaces that will assist the Supplier in understanding connections with other applications or services.
- (f) IPR: Please confirm that the Customer owns or has all necessary Intellectual Property Rights required to amend each application.
- (g) Application support: Please provide details of the Customer teams or external suppliers of application services responsible for maintaining and supporting the application and whether such teams or suppliers retain the people who understand this application and can support it.
- (h) Out of Support: Please provide details of any applications or elements of applications that are no longer supported.
- (i) History: Please provide details of when the application was originally written and of any major changes and confirm whether it is still actively maintained, developed and supported. Actively maintained in this context means that the code is regularly reviewed and redundant or unused code is considered for removal.
- (j) Code: Please confirm approximately how many lines of code there are in each application. Please confirm if the Source Code exists and if it can be mapped to object code.
- (k) Other: Please confirm that there is no application code or application required for operating the Prime VPaaS Applications other than those listed at Appendix A.

## ANNEX 2-4

### THIRD PARTY CONTRACTS AND LICENCES

#### 1. INTRODUCTION

- 1.1 This Annex 2-4 (**Customer Third Party Contracts and Licences**) sets out the details of the Customer Third Party Contracts identified as at the Effective Date and relevant to this Agreement.
- 1.2 The Parties shall comply with the requirements of this Annex 2-4 (**Customer Third Party Contracts and Licences**) which sets out the treatment of Customer Third Party Contracts relevant to this Agreement.
- 1.3 The Customer agrees that the continued provision of the applicable goods, services, access and/or permissions under the Customer Third Party Contracts set out in this Schedule are necessary to enable the Supplier to provide the VPaaS Services under this Agreement.

#### 2. CUSTOMER THIRD PARTY CONTRACTS

- 2.1 The Parties agree that the Supplier requires all necessary access / permissions / sub-licences in respect of the Customer Third Party Contracts set out in Table 1.1 below in order to provide the applicable VPaaS Services.
- 2.2 The Customer shall ensure that such Customer Third Party Contracts and all necessary access / permissions / sub-licences remain in place during the Term unless agreed otherwise in accordance with the Change Control Procedure.
- 2.3 Where Table 1.1 specifies that the applicable Customer Third Party Contract is:
  - (a) 'Customer Paid', then the Customer shall be responsible for making all required payments under that Customer Third Party Contract; or
  - (b) a 'Pass-Through Expense', then the Supplier shall pay the applicable charges under that Customer Third Party Contract until the earlier of: (i) termination or expiry of that Customer Third Party Contract; or (ii) Termination of this Agreement, provided that the Customer pays the applicable Pass-Through Expenses for that Customer Third Party Contract.
- 2.4 The Parties agree that it is not their intention to vary the arrangements for who provides and pays for which elements of third party. In the case of any omissions or ambiguities in respect of the Table 1.1 listing the parties will in good faith agree any changes needed to the table on this basis – subject only to the principle that the Customer shall be responsible for ensuring any Third Party Contract or licence needed for MVE is available in time to achieve the Schedule 2 appendix A and C dates and the obligation and cost of them being MVE compatible is the responsibility of the Customer.
- 2.5 ***Redacted***

**ANNEX 2-5****MODERNISATION SERVICES**

[Insert here the standard terms that the Parties may agree shall apply to Modernisation Services.]

[Note: these terms are not mandated and any Modernisation Services shall be on terms to be agreed in writing by the Parties]

**ANNEX 2-6****APPLICATION SERVICES**

[Insert here the standard terms that the Parties may agree shall apply to Application Services.]

[Note: these terms are not mandated and any Application Services shall be on terms to be agreed in writing by the Parties]

**ANNEX 2-7****GDPR & DATA PROCESSING****PART A: DATA PROCESSING AND LIST OF SUB-PROCESSORS FOR THE CHIEF VPAAS SERVICES****PART A-1: DATA PROCESSING ACTIVITIES**

| <b>Description</b>                                                                                                                                           | <b>Contents</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subject matter of the processing                                                                                                                             | Processing of import and export declarations for Traders, their agents or representatives.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Duration of the processing                                                                                                                                   | For the length of the Term of the Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Nature and purposes of the processing                                                                                                                        | Declarations made into CHIEF are/can be: stored within databases, licence information may be sent to OGDs, finance information sent to the Customer Finance services or transferred to management systems for compliance activity, as required to allow the CHIEF VPaaS Services to function as intended.<br>CHIEF is the current UK customs declaration processing system, which calculates/collects Tax and duties, reports into the Customer accounting systems and checks/processes OGD import/export licences. Once accepted in CHIEF declaration data can only be amended by the declarant. |
| Type of Personal Data                                                                                                                                        | Such types of Personal Data as are being processed pursuant to the Agreement, and commercially required information which may under certain circumstances also be Personal Data including but not limited to: <ul style="list-style-type: none"> <li>• trader name</li> <li>• address</li> <li>• VAT number</li> <li>• trading name</li> <li>• company name</li> <li>• business address.</li> </ul>                                                                                                                                                                                               |
| Categories of Data Subject                                                                                                                                   | Those identified or identifiable natural persons who are the subject of the processing undertaken pursuant to the Agreement, including but not limited to: import and export traders and their representatives.                                                                                                                                                                                                                                                                                                                                                                                   |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | 6 months' declaration data retained within live system. Reference data held within live system until amended or deleted, Daily transfer of data to management system (CHIEF MSS for internal users). Export data retained in CHIEF MSS for 48 months and Import data for 54 months.                                                                                                                                                                                                                                                                                                               |

**PART A-2: SUB-PROCESSORS**

|          |                               |
|----------|-------------------------------|
| Supplier | Brief Description of activity |
|----------|-------------------------------|

|     |     |
|-----|-----|
| N/A | N/A |
|-----|-----|

## **PART B: DATA PROCESSING AND LIST OF SUB-PROCESSORS FOR THE PRIME VPAAS SERVICES**

### **PART B-1: DATA PROCESSING ACTIVITIES**

| <b>Description</b>                    | <b>Contents</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subject matter of the processing      | Processing in order for the Supplier to provide the services that the Supplier is contracted to supply or requested to supply under the Agreement to support the collection of Taxes, the payment of benefits and such ancillary activities as are required of, or exercised by, HM Revenue and Customs under its statutory functions or otherwise (as further described in the Prime VPaaS Services).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Duration of the processing            | For the length of this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Nature and purposes of the processing | <p>Any processing undertaken by the Supplier pursuant to, or in connection with this Agreement, and in order to support the Customer in its activities for the assessment and collection of Taxes, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Corporation Tax;</li> <li>• Capital Gains Tax;</li> <li>• Inheritance Tax;</li> <li>• Insurance Premium Tax;</li> <li>• Petroleum Revenue Tax;</li> <li>• Environmental taxes;</li> <li>• Stamp Duty and Land taxes;</li> <li>• Climate Change Levy;</li> <li>• Aggregates Levy;</li> <li>• Landfill Tax;</li> <li>• VAT, including import VAT;</li> <li>• Customs Duty;</li> <li>• Excise duties;</li> <li>• National Insurance contributions; list paragraph</li> </ul> <p>the assessment and payment of Tax Credits and Child Benefit;</p> <p>the enforcement of the National Minimum Wage;</p> <p>the recovery of Student Loan repayments;</p> <p>the preparation of Trade Statistics; and</p> <p>anything necessary or expedient in connection with the exercise of the Customer's functions, or incidental or conducive to the exercise of the Customer's functions or otherwise requested by the Customer.</p> |



|                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Personal Data                                                                                                                                        | <p>Such types of Personal Data as are being processed pursuant to the Agreement, including but not limited to:</p> <ul style="list-style-type: none"> <li>• personal contact details such as name, title, addresses, telephone numbers, and personal email addresses;</li> <li>• gender;</li> <li>• marital status and dependents;</li> <li>• national Insurance number;</li> <li>• bank account details;</li> <li>• income;</li> <li>• employment;</li> <li>• business activities;</li> <li>• domestic and business properties;</li> <li>• biometric data, such as voice recognition data;</li> <li>• information about criminal convictions, allegations and offences, where relevant in relation to the Customer's functions.</li> </ul> |
| Categories of Data Subject                                                                                                                                   | <p>Those identified or identifiable natural persons who are the subject of the processing undertaken pursuant to the Agreement, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Members of the public</li> <li>• customers and clients</li> <li>• businesses</li> <li>• suppliers and service providers</li> <li>• advisers, consultants and other professional experts</li> <li>• complainants and enquirers</li> <li>• agents and representatives</li> <li>• relatives, children, guardians, dependents and associates</li> <li>• offenders and suspected offenders</li> <li>• the Customer employees.</li> </ul>                                                                                              |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | As specified in an existing Exit Plan in place or an Exit Plan agreed at contract termination.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

## PART B-2: SUB-PROCESSORS

| Supplier   | Brief Description of activity                                                                       |
|------------|-----------------------------------------------------------------------------------------------------|
| Checkpoint | Only Firewall hardware and OS diagnostics are shared with Checkpoint. No remote access provided.    |
| Cisco      | Only Firewall hardware and OS diagnostics are shared with Checkpoint.                               |
| Citrix     | Only switch and router hardware and OS diagnostics are shared with Checkpoint.                      |
| Dell       | Old kit used for Guardium 8. The new Guardium 10s left onsite use IBM. See EMC as they have merged. |

|                 |                                                                                                                                                                                                                                        |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DRS             | Personal Data held on tapes. However access to data would require to be reverse engineered and password to application and databases.                                                                                                  |
| EMC             | Storage SAN Array. Remote access provided through the Customer approved solution. Access only provided to SAN array diagnostic information. Any PI data would need to be reversed engineered.                                          |
| Experian        | The Supplier engages them only in hardware and OS Support data.                                                                                                                                                                        |
| Fujitsu Gmbh    | Fujitsu Germany, used for TPG calls on Fujitsu hardware/Software calls. Reverse engineer of solution to access Personal Data through dumps and diagnostics.                                                                            |
| Fujitsu India   | Access to the Customer users details through 4th line support of TfsNow. They can see all call information that is logged in TFSNow.                                                                                                   |
| Hewlett Packard | Operating System and tooling solutions. Diagnostic data only potential reverse engineer of solution to access data.                                                                                                                    |
| IBM             | Operating System and tooling solutions. Diagnostic data only potential reverse engineer of solution to access data.                                                                                                                    |
| LogRhythm       | Security Information and Event Management. Possibly Log samples submitted in support of troubleshooting may contain system user identities (e.g. PIDs or Active directory user names) and workstation IP addresses or onsite engineer. |
| McAfee          | Anti-virus. Possibly access to data through diagnostics data or onsite engineer. Might utilise a contract within Forcepoint vendor                                                                                                     |
| Microsoft       | Operating System. Possibly access to data through diagnostics data and core dumps.                                                                                                                                                     |
| Netapp          | This is managed through FJ core and is run by PBS (used to be TPG). These are storage devices. May get Personal Data as a result of diagnostics or engineer called to site would require reverse engineer of solution.                 |
| Oracle          | Operating System and tooling solutions. Diagnostic data only potential reverse engineer of solution to access data.                                                                                                                    |
| Pluralsight     | Used for the Supplier's staff training                                                                                                                                                                                                 |
| Red Hat         | Operating System and tooling solutions. Diagnostic data only potential reverse engineer of solution to access data.                                                                                                                    |
| SUSE            | Operating System. Possibly access to data through diagnostics data and core dumps.                                                                                                                                                     |
| Symantec        | Anti Virus protection. Access to data through diagnostics data and core dumps.                                                                                                                                                         |
| Tenable         | Vulnerability assessment tool. Licences. Very unlikely to see Personal Data                                                                                                                                                            |
| Thales          | Hardware breakfix for banking equipment, this process involves CG and Experian. Secure the Customer approved solution.                                                                                                                 |
| TOTIS           | A 3rd party vendor to get hardware breakfix parts for aged out of support kit. They do not receive any logs or have any parts returned to them if used for a break fix call                                                            |
| Veritas         | Clustering and Anti-virus. Access to diagnostics data or onsite engineer.                                                                                                                                                              |
| Zensar          | A 3rd party vendor for Oracle to get hardware breakfix parts for aged out of support kit. Access to diagnostics data and core dumps. Would require reverse engineering.                                                                |



**SCHEDULE 3**  
**PROJECTS AND RATE BASED SERVICES**

## 1 GENERAL

This Schedule sets out the main principles and processes for procuring Projects or Rate Based Services under this Agreement.

## 2 PROJECTS - ORDERING PROCESS INTRODUCTION

- 2.1 If at any time during the term, the Customer wishes the Supplier to provide services pursuant to a Project, the Customer may request the Supplier to provide those services in accordance with this Schedule 3 (**Projects and Rate Based Services**).
- 2.2 Charges for Projects will be paid in accordance with Schedule 5 (**Charges**), and may be agreed on a fixed price or time and materials basis, as agreed by the Parties in respect of each Project.
- 2.3 A Project may be procured either on an agile basis (an "**Agile Project**") or a waterfall basis (a "**Waterfall Project**"), as will be specified in respect of each proposed Project and agreed by the Parties. The process set out within this Schedule for the procurement of Projects is intended to apply both to Agile Projects and Waterfall Projects, with various differences where necessary, as highlighted in this Schedule, in order to accommodate the different project methodologies being utilised.

## 3 PROJECTS - INITIATING AND PROGRESSING A SUPPLIER PROPOSAL

- 3.1 Each Party's role in the Projects ordering process is set out in this Section 3.
- 3.2 The Customer may from time to time during the Term request the Supplier to prepare a Supplier Proposal, following which the Parties shall agree the timescales for delivery of the Supplier Proposal and whether the Supplier shall provide a Discovery Proposal and/or a Delivery Proposal.
- 3.3 Upon the request from the Customer, the Supplier shall prepare and deliver to the Customer with the timeframe agreed by the Parties pursuant to Section 3.2 a Discovery Proposal and/or a Delivery Proposal (as agreed), and irrespective of whether the requested Project is anticipated as an Agile Project or a Waterfall Project.
- 3.4 A "**Discovery Proposal**" shall provide a high level view of the resources and effort required for the Discovery Phase of any Project, that is for the initial scoping and understanding of the proposed delivery of the Project, and shall be substantially in the form set out in Annex 3-1.
- 3.5 A "**Delivery Proposal**" shall provide a high level view of the resources and effort required for the Delivery Phase of any Project, and shall be substantially in the form set out in Annex 3-2.
- 3.6 In respect of any Project, the Parties may agree that the Supplier should prepare just a Discovery Proposal or just a Delivery Proposal (which could relate to an earlier Discovery Proposal or Delivery Proposal), or a combination of the two. Any approved Discovery Proposal or Delivery Proposal constitutes a Project for the purposes of this Agreement.
- 3.7 The Supplier shall produce Supplier Proposals of sufficient quality to allow the Customer, acting reasonably, to understand the charges and deliverables proposed.

- 3.8 The proposed commercial treatment for any Project (including, in particular, the proposed charging basis and whether it shall be a time and materials, or fixed price Project) will be proposed by the Supplier in either the applicable Supplier Proposal, and thereafter discussed by the Parties.
- 3.9 A Supplier Proposal will be subject to full commercial review by the Customer, including with respect to the charging mechanism, and shall be updated by the Supplier in line with the Parties' discussions. In particular:
- (a) the Customer shall identify to the Supplier any commercial issues as soon as it becomes aware of them; and
  - (b) the Supplier shall identify to the Customer any commercial issues that might materially affect the price for the Project as soon as it becomes aware of the issue and its potential likely effect.
- 3.10 In respect of each Waterfall Project, the commercial basis and charges for the Project shall be agreed prior to commencement of the Project, but subject to the commercial cover provisions set out in Section 4 below.
- 3.11 In respect of each Agile Project, the Parties may agree to commence the Project subject to identifying and addressing any commercial issues which may arise during the delivery of such Projects, and in respect of such commercial issues:
- (a) the commercial issues must be resolved as soon as reasonably practicable following the identification of the relevant commercial issue; and
  - (b) the Parties will track:
    - (i) the Supplier's performance in identifying commercial issues and potential price-impacting changes during the Project; and
    - (ii) the Customer's performance in respect of the early identification to the Supplier of commercial issues identified by the Customer as part of its Supplier Proposal responses,
- and the Parties shall discuss and agree appropriate actions if either performances consistently fall below acceptable levels such that the other Party is impacted or inconvenienced.
- 3.12 In relation to each Supplier Proposal:
- (a) the Supplier's obligations in relation to the preparation and issue of a Supplier Proposal are subject to the Customer providing to the Supplier, within the timeframe as agreed by the Parties, all information that is reasonably requested by the Supplier to enable the Supplier to prepare those documents; and
  - (b) the Customer's obligations in relation to the approval of each Supplier Proposal are subject to the Supplier providing to the Customer, within the timeframe as agreed by the Parties, all information that is reasonably requested by the Customer (including the information required from the Discovery Proposal and Delivery Proposal documents and any other information reasonably requested by the Customer) to enable the Customer to undertake a proper consideration

of those documents, including early notification to the Customer of potential price changes,

provided that, in the event that such information or notification is not so provided by the Supplier or if important (and, particularly, price-affecting) information is presented by the Supplier late or close to the due date of issue of a Supplier Proposal, the time limits for the Customer's approval shall not apply and the Parties shall discuss and agree alternative time limits and/or dates.

3.13 The Parties shall progress a Supplier Proposal as anticipated by this Section 3, and the Supplier shall issue a "final" Supplier Proposal to the Customer for the Customer's approval in accordance with Section 5 below once:

- (a) any commercial issues identified have been resolved (or the Parties otherwise agree to proceed to Supplier Proposal regardless of the existence of outstanding commercial issues, in accordance with the provisions of Section 4 below); and
- (b) where relevant, the final system architecture affected by that Supplier Proposal has been through the appropriate Customer architectural review stage as part of the Supplier Proposal,

a "**Final Supplier Proposal**". The Final Supplier Proposal can be in respect of a Discovery Proposal or a Delivery Proposal.

#### **4 PROJECTS – INTERIM COMMERCIAL COVER**

- 4.1 The Supplier shall issue to the Customer a draft Interim Approval Certificate if appropriate to allow work to commence ahead of formal approval of any Final Supplier Proposal that the Supplier issues to the Customer. The Supplier shall not commence any work in respect of a Project (other than the development of Supplier Proposals) prior to the signature or authorisation of an Interim Approval Certificate or signature of a Full Approval Certificate in respect of the applicable Supplier Proposal.
- 4.2 If the Customer wishes the Supplier either to start the Project or to continue with the next stage of the Project, the Customer shall either sign and return that draft Interim Approval Certificate un-amended or with an amended financial limit as agreed by the Parties. For clarity, such certificate may be sent back to the Supplier in an electronic format. These Interim Approval Certificates constitute contractual authority from the Customer for the Supplier to charge the Customer for effort and expenditure incurred on a Project (subject to the provisions of the Agreement) up to the financial limits set out in the Interim Approval Certificates in the periods prior to the approval by the Customer of the Supplier Proposal for the Project.
- 4.3 Interim Approval Certificates may be authorised electronically by the Customer by email acting through an authorised member of the Customer's Contract Management Team who shall issue the email and whose name shall appear on the approval certificate.

#### **5 PROJECTS - ACCEPTING OR REJECTING A SUPPLIER PROPOSAL**

- 5.1 On issue by the Supplier to the Customer of a Final Supplier Proposal pursuant to Section 3.13 above, the Customer shall communicate in writing its decision to the

Supplier within forty-five (45) Working Days or such other time period agreed by the Parties of the issue to it by the Supplier of a Final Supplier Proposal whether or not to proceed with the Project.

- 5.2 Where the Customer decides not to proceed with the Project, it shall notify the Supplier in writing within the forty-five (45) Working Days or such other time period agreed by the Parties and the Project shall terminate. If the Customer has authorised an Interim Approval Certificate then, subject to the financial limits set out in such Interim Approval Certificate(s), the Customer shall pay the Supplier for all reasonable work performed on that Project, chargeable on a time and materials basis up to the point of termination, in addition to any costs specifically relating to that Project identified in the applicable Interim Approval Certificates that are necessarily incurred by the Supplier, all in accordance with and subject to the terms of the applicable Interim Approval Certificates.
- 5.3 Where the Customer decides to proceed with the Project, it shall sign and return to the Supplier within the forty-five (45) Working Days or such other time period agreed by the Parties the Full Approval Certificate for the Final Supplier Proposal unless an alternative period is agreed between the Parties, and thereafter the Project will commence or continue unless cancelled. The Parties will track the Customer's performance against the forty-five (45) Working Days period (or such other agreed period of time) in respect of the Final Supplier Proposal approval, and shall discuss and agree appropriate actions if the Customer consistently fails to hit this target.
- 5.4 If the Customer has not responded to the Supplier's request for approval within the forty-five (45) Working Days or such other time period agreed by the Parties with an approval or a rejection, upon the expiry of any commercial cover (if applicable) in respect of the Project (by way of an initial or any subsequent Interim Approval Certificates) the Project will be cancelled by default on the day after the cover expires. If the Customer has authorised an Interim Approval Certificate then, subject to the financial limits set out in such Interim Approval Certificate(s), the Customer shall pay the Supplier for all reasonable work performed on that Project, chargeable on a time and materials basis up to the point of automatic cancellation, in addition to any costs specifically relating to that Project identified in the Interim Approval Certificate that are necessarily incurred by the Supplier, all in accordance with and subject to the terms of the relevant Interim Approval Certificate.

## 6 PROJECTS - PROJECT PLANS

- 6.1 For each Project, as part of the Supplier Proposal the Parties will agree a detailed project plan ("**Project Plan**") which clearly sets out:
- (a) the responsibilities of each Party;
  - (b) the timescales (including any milestones) for each party's compliance with its responsibilities;
  - (c) the Charges or estimate thereof (as applicable) for that Project, which shall be calculated in accordance with Schedule 5 (**Charges**);
  - (d) the amount of effort in terms of Man-days (or other agreed basis of measurement);



- (e) risks identified in respect of the Project;
- (f) subject to Clause 15 and 16 of the Terms and Conditions, the arrangements in respect of Liquidated Damages;
- (g) acceptance criteria covering the agreed performance objectives for the work contained within the Supplier Proposal; and
- (h) any agreed Service Levels, Service Credits and associated monitoring, measurement and calculation provisions in respect of the Supplier's performance of the applicable Project Services.

## **7 PROJECTS - VARIATIONS**

### **7.1 Agile Projects**

- (a) If the Customer requires additional Man-days to that approved in a Supplier Proposal relating to an Agile Project then a capacity variance notice (substantially in the form set out in Annex 3-5) shall be used. Such notice shall state the number of Man-days required and the associated charges. A Change Request may also be used to vary the scope of an Agile Project.
- (b) Where the Customer requires additional infrastructure to that approved in a Supplier Proposal or in the event that the Supplier Proposal produced by the Supplier is based upon non-baseline requirements, the Customer shall submit a Change Request to the Supplier for the baselined solution. The Change Request may (if applicable) include additional or amended infrastructure and resource effort required through the process.

### **7.2 Waterfall Projects**

- (a) Changes to a Waterfall Project shall be agreed pursuant to the Change Control Procedure.

## **8 PROJECTS - CANCELLATION OF PROJECTS FOR CONVENIENCE**

- 8.1 If, following the Customer's signature of the Full Approval Certificate, the Customer cancels the applicable Project for reasons other than Supplier Default or failure to meet appropriate acceptance criteria, then all Charges for such Project that have accrued in accordance with the approved Final Supplier Proposal but not yet invoiced in respect of that Project up to the point of cancellation will still be chargeable and paid by the Customer.

## **9 PROJECTS - THIRD PARTY PROJECTS**

- 9.1 The Parties acknowledge that the Supplier may have full responsibility for the delivery of a Project, or may be working in support of a third party supplier where such third party supplier has the overall responsibility for the delivery of a Project. The approach to be adopted will be agreed by the Parties in advance of the start of the Project.

## **10 PROJECTS - LIQUIDATED DAMAGES**

Subject to Clause 15 and 16 of the Terms and Conditions, if in respect of a Project, the Supplier fails to deliver a key deliverable (to which this Section 10 has been

expressly applied) under that Project in accordance with the agreed date(s) specified in the Project Plan for that Project (as varied from time to time) ("**Project Delay**"), then the Supplier shall be liable to pay any agreed Liquidated Damages in accordance with the applicable Project Plan. Payment by the Supplier to the Customer of Liquidated Damages in respect of a Project Delay shall be the Customer's sole remedy in respect of that Project Delay.

## **11 RATE BASED SERVICES – ORDERING PROCESS**

- 11.1 The Customer may require the Supplier to provide certain Rate Based Services, as anticipated by Schedule 5 (**Charges**).
- 11.2 If Rate Based Services are required, then the Customer shall issue, or request that the Supplier prepare and issue, a "**Request for Work**" setting out the Rate Based Services required, along with other known details or parameters relating to such Rate Based Services.
- 11.3 In reply to the prepared Request for Work, the Supplier will provide a response setting out the proposed Charges (calculated in accordance with the provisions of Schedule 5 (**Charges**)) (a "**RfW Response**").
- 11.4 The Supplier will provide a RfW Response within ten (10) days of receipt of the prepared Request for Work.
- 11.5 The Customer shall respond to the RfW Response within ten (10) days of receipt of the RfW Response, stating whether or not it wishes to proceed with the relevant Rate Based Services, or if it requires any further, reasonable information in order to make its decision. If approved, the Customer's notice shall constitute the "**RfW Approval**".

## **12 RATE BASED SERVICES - INVOICING**

- 12.1 No Rate Based Services shall be invoiced until the Customer has issued an RfW Approval. Once approval has been received, then invoicing for the Rate Based Services provided shall commence on the next invoice.
- 12.2 The Supplier shall invoice the Customer for all actual Man-days validly undertaken against the Rate Based Services on the charge codes that the Customer provides, and shall do so each month in arrears (i.e. the actual Man-days validly undertaken during April will be invoiced in the end of that April invoice).
- 12.3 Invoiced Man-day charges shall not exceed one hundred per cent (100%) of the Supplier's Man-day charges approved by the Customer in the relevant RfW Approval, unless and to the extent that a subsequent Change is agreed.

**ANNEX 3-1****TEMPLATE DISCOVERY PROPOSAL**

|   |                            |                                                       |
|---|----------------------------|-------------------------------------------------------|
| 1 | Title of intended Project  | <b>[Insert title of intended Project.]</b>            |
| 2 | Reference Number           | <b>[Insert reference number of intended Project.]</b> |
| 3 | Originator                 | <b>[Insert name of originator.]</b>                   |
| 4 | Date of Discovery Proposal | <b>[Insert date of Discovery Proposal.]</b>           |

**1 Introduction**

This Proposal has been developed pursuant to the agreement between the Commissioners for Her Majesty's Revenue and Customs ("**Customer**") and Fujitsu Services Limited ("**Supplier**") dated [date] ("**Agreement**").

**2 Outline Approach**

*[Insert a high level view of the resources and effort required for the Discovery Phase of any the Project, including the proposed work breakdown structure (e.g. key deliverables, timescales and estimated number of each type of resource required).]*

**3 Charges**

*[Insert details of the proposed charging basis for the Project, including whether it shall be a time and materials, or fixed price Project. These need to be calculated in accordance with the Rate Card and the full price needs to be included]*

*Where necessary, set out activities which are out of scope of the Charges above, using the wording below:*

The Charges set out above do not include the following activities:

- *[Insert details of activities that are out of scope.]*

**4 Project Plan**

*[Insert details of the proposed timetable for the intended Project, including any milestones.]*

**5 Milestones and Liquidated Damages**

*[Insert details of the milestones for the Project using the table below (including achievement*

*criteria and applicable Liquidated Damages (and how these are calculated (as agreed))).]*

| ID | Description | Milestone Achievement Criteria | Milestone Charge | Liquidated Damages |
|----|-------------|--------------------------------|------------------|--------------------|
|    |             |                                |                  |                    |
|    |             |                                |                  |                    |

## **6 Deliverables / Services**

*[Insert details of the deliverables / services which the Supplier is required to provide as part of the Project]*

## **7 Resource Profile (for Projects charged on a time and materials basis)**

*[Insert details (including names of individuals) of the resource profile the Supplier intends to use to deliver the intended Project to the extent that the Supplier is able to provide such information.]*

## **8 Risks and Assumptions**

*[Insert details of:*

- *key assumptions (including any cost assumptions) and anticipated risks and contingency; and*
- *the proposed outline arrangements for risk and issue management]*

## **9 Customer Dependencies**

*[Insert details of any responsibilities of / dependencies upon the Customer and / or any third parties under this Proposal which are not set out in the Agreement]*

## **10 Subcontractors**

*[Insert details of the Subcontractors who the Supplier proposes will be utilised in the delivery of the Project]*

## **11 Existing services**

*[Insert details of the Supplier's assessment as to whether any element of the services which would be required in respect of the Project are already being provided by the Supplier under this Agreement.]*

## ANNEX 3-2

## TEMPLATE DELIVERY PROPOSAL

|   |                            |                                                       |
|---|----------------------------|-------------------------------------------------------|
| 1 | Title of intended Project  | <b>[Insert title of intended Project.]</b>            |
| 2 | Reference Number           | <b>[Insert reference number of intended Project.]</b> |
| 3 | Originator                 | <b>[Insert name of originator.]</b>                   |
| 4 | Date of Discovery Proposal | <b>[Insert date of Discovery Proposal.]</b>           |

**1 Introduction**

This Delivery Proposal has been developed pursuant to the agreement between the Commissioners for Her Majesty's Revenue and Customs ("**Customer**") and Fujitsu Services Limited ("**Supplier**") dated [date] ("**Agreement**").

**2 Outline Approach**

*[Insert a high level view of the resources and effort required for the Delivery Phase of any the Project, including the proposed work breakdown structure (e.g. key deliverables, timescales and estimated number of each type of resource required)]*

**3 Charges**

*[Insert details of the proposed charging basis for the Project, including whether it shall be a time and materials, or fixed price Project. These need to be calculated in accordance with the Rate Card and the full price needs to be included.*

*Where necessary, set out activities which are out of scope of the Charges above, using the wording below:*

The Charges set out above do not include the following activities:

- *[Insert details of activities that are out of scope.]*

**4 Project Plan**

*[Insert details of the proposed timetable for the intended Project, including any milestones.]*

**5 Milestones and Liquidated Damages**

*[Insert details of the milestones for the Project using the table below (including achievement*

*criteria and applicable Liquidated Damages (and how these are calculated (as agreed))).]*

| ID | Description | Milestone Achievement Criteria | Milestone Charge | Liquidated Damages |
|----|-------------|--------------------------------|------------------|--------------------|
|    |             |                                |                  |                    |
|    |             |                                |                  |                    |

## **6 Deliverables / Services**

*[Insert details of the deliverables / services which the Supplier is required to provide as part of the Project]*

## **7 Resource Profile (for Projects charged on a time and materials basis)**

*[Insert details (including names of individuals) of the resource profile the Supplier intends to use to deliver the intended Project to the extent that the Supplier is able to provide such information.]*

## **8 Risks and Assumptions**

*[Insert details of:*

- *key assumptions (including any cost assumptions) and anticipated risks and contingency; and*
- *the proposed outline arrangements for risk and issue management]*

## **9 Customer Dependencies**

*[Insert details of any responsibilities of / dependencies upon the Customer and / or any third parties under this Proposal which are not set out in the Agreement]*

## **10 Subcontractors**

*[Insert details of the Subcontractors who the Supplier proposes will be utilised in the delivery of the Project]*

## **11 Existing services**

*[Insert details of the Supplier's assessment as to whether any element of the services which would be required in respect of the Project are already being provided by the Supplier under this Agreement.]*

**ANNEX 3-3****TEMPLATE INTERIM APPROVAL CERTIFICATE**

|   |                  |                                            |
|---|------------------|--------------------------------------------|
| 1 | Title of Project | <b>[Insert title of intended Project.]</b> |
|---|------------------|--------------------------------------------|

- 1 This Interim Approval Certificate is issued pursuant to Section 4 of Schedule 3 (**Projects and Rate Based Services**) of the agreement between the Commissioners for Her Majesty's Revenue and Customs ("**Customer**") and Fujitsu Services Limited ("**Supplier**") dated [date] ("**Agreement**").
- 2 Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (**Interpretation and Definitions**) of the Agreement.
- 3 The Supplier submitted to the Customer [a Proposal / Proposals] dated [date] (reference number [reference number]) for [insert Title of intended Project] pursuant to the Agreement ("**Project**"), which [is / are] attached to this Certificate at the Appendix.
- 4 The Parties acknowledge and agree that it is necessary for the Supplier to proceed with performing and providing certain activities and deliverables pursuant to the intended Project in order to meet the required timeframes for the Project. Accordingly, the Customer hereby authorises the Supplier to charge the Customer for effort and expenditure incurred on the Project (subject to the provisions of the Agreement) up to the following financial limits:
  - (a) [Insert financial limits]
- 5 The obligations set out in this letter shall come into force on the date on which the Customer signs and delivers to the Supplier this letter and, subject to paragraph 6 below, shall continue in force for a period of [insert timeframe] from such date.
- 6 The provisions set out in this letter shall cease to have effect on the date on which the Customer authorises a Full Approval Certificate for the Project.

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

**APPENDIX TO INTERIM APPROVAL CERTIFICATE****PROPOSAL**

*[Attach the Proposal / Proposals in respect of which the approval is being provided]*



**ANNEX 3-4****TEMPLATE FULL APPROVAL CERTIFICATE**

|   |                  |                                            |
|---|------------------|--------------------------------------------|
| 1 | Title of Project | <b>[Insert title of intended Project.]</b> |
|---|------------------|--------------------------------------------|

- 1 This Full Approval Certificate is issued pursuant to Section 5 of Schedule 3 (**Projects and Rate Based Services**) of the agreement between the Commissioners for Her Majesty's Revenue and Customs ("**Customer**") and Fujitsu Services Limited ("**Supplier**") dated [date] ("**Agreement**").
- 2 Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (**Interpretation and Definitions**) of the Agreement.
- 3 The Supplier submitted to the Customer a Final Supplier Proposal dated [date] (reference number [reference number]) for [insert Title of intended Project] ("**Final Supplier Proposal**") pursuant to the Agreement ("**Project**"), which is attached to this Certificate at the Appendix.
- 4 The Customer hereby authorises the Supplier to provide the Services for the delivery of the Project set out in the Final Supplier Proposal, subject to and in accordance with its terms.

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

**APPENDIX TO FULL APPROVAL CERTIFICATE****FINAL SUPPLIER PROPOSAL**

*[Attach the Final Supplier Proposal in respect of which the approval is being provided]*

**ANNEX 3-5****TEMPLATE CAPACITY VARIANCE NOTICE**

|   |                  |                                   |
|---|------------------|-----------------------------------|
| 1 | Title of Project | <b>[Insert title of Project.]</b> |
|---|------------------|-----------------------------------|

- 1 We refer to the agreement between the Commissioners for Her Majesty's Revenue and Customs ("**Customer**") and Fujitsu Services Limited ("**Supplier**") dated [date] ("**Agreement**").
- 2 Capitalised terms used in this notice have the meanings given to them in Schedule 1 ("**Interpretations and Definitions**") of the Agreement.
- 3 Pursuant to Section 7 of Schedule 3 ("**Projects and Rate Based Services**") of the Agreement, the Customer requires the following additional Man-days to that approved in the Proposal dated [date] (reference number [reference number]) for [insert Title of Project]:  
  
[insert additional Man-days required, including the specific roles and Rates, and the associated Charges]

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

**SCHEDULE 4**  
**SERVICE MEASUREMENT**

## 1. INTRODUCTION

1.1 This Schedule sets out the performance standards to be achieved by the Supplier in the delivery of the Services.

1.2 It details:

- (a) the general provisions which apply to performance standards in respect of all Service Levels and Service Credits;
- (b) in Annex 4-1 (**CHIEF VPaaS Service Levels and Service Credits**):
  - (i) the Parties' obligations with respect to the monitoring of performance against the CHIEF VPaaS Service Levels;
  - (ii) the measurement and calculation of the Supplier's performance against the CHIEF VPaaS Service Levels; and
  - (iii) the calculation and payment of Service Credits in respect of any failure to meet the CHIEF VPaaS Service Levels;
- (c) in Annex 4-2 (**Prime VPaaS Service Levels and Service Credits**):
  - (i) the Parties' obligations with respect to the monitoring of performance against the Prime VPaaS Service Levels;
  - (ii) the measurement and calculation of the Supplier's performance against the Prime VPaaS Service Levels; and
  - (iii) the calculation and payment of Service Credits in respect of any failure to meet the Prime VPaaS Service Levels;
- (d) in Annex 4-3 (**Modernisation Services Service Levels**), the process for agreeing:
  - (i) the Parties' obligations with respect to the monitoring of performance against the Modernisation Services Service Levels;
  - (ii) the measurement and calculation of the Supplier's performance against the Modernisation Services Service Levels; and
  - (iii) the calculation and payment of any Service Credits in respect of any failure to meet the Modernisation Services Service Levels;
- (e) in Annex 4-4 (**Application Services Service Levels**), the process for agreeing:
  - (i) the Parties' obligations with respect to the monitoring of performance against the Application Services Service Levels;
  - (ii) the measurement and calculation of the Supplier's performance against the Application Services Service Levels; and

- (iii) the calculation and payment of any Service Credits in respect of any failure to meet the Application Services Service Levels.

## 2. GENERAL PROVISIONS

2.1 This Section 2 "General Provisions" applies generally to performance by the Supplier of the VPaaS Services namely:

- (a) CHIEF VPaaS Services and CHIEF VPaaS Service Levels; and
- (b) Prime VPaaS Services and Prime VPaaS Service Levels.

2.2 This Section 2 "General Provisions" also applies generally to performance by the Supplier of the following Services, unless the Parties expressly agree the basis on which this Section of the Schedule shall not apply to such Services when detailing any Service Levels and associated provisions in the Supplier Proposal in respect of the Projects for these Services:

- (a) Service Levels applicable to Modernisation Services; and
- (b) Service Levels applicable to Application Services.

For the avoidance of doubt this Schedule 4 (**Service Measurement**) imposes no Service Levels for such Services and these shall be dealt with on a project by project basis pursuant to the agreed Supplier Proposal.

### 2.3 Scope of Supplier performance and its measurement

- (a) The Supplier shall measure and report on its performance of the Services in accordance with this Schedule and Schedule 9 (**Reporting**).
- (b) Unless otherwise expressly stated, the Supplier's performance in respect of the CHIEF VPaaS Services and the Prime VPaaS Services that is to be measured and reported against is that of performing the VPaaS Services. Such CHIEF VPaaS Services and the Prime VPaaS Services provide a platform for the operation of specific VME Applications. The Supplier has no responsibility in respect of the performance of the VME Applications except in circumstances where such performance is adversely impacted by performance of either the CHIEF VPaaS Services or the Prime VPaaS Services.
- (c) Where performance of a Service Level is measured from end to end, or for scope that is wider than the Supplier's responsibility, the Supplier's performance is to be measured and considered only by reference to the Supplier's scope of its Services and related performance and for matters that it controls or is responsible for under the Agreement.

### 2.4 Nature of Service Credits

Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect any under-performance in the provision of the Services.

### 2.5 Measurement of Supplier performance

- (a) The Parties recognise that a failure to meet some Service Levels may result from a failure on the part of either Party or both. In those circumstances Service Credits payable by the Supplier to the Customer shall be calculated in accordance with the performance of the Supplier against the Supplier's obligations.
- (b) Where either Party does not agree that it is possible to determine the attribution of the Service Level Failure, then that party may refer the matter to the Escalation Process.
- (c) The Customer shall use performance reports provided or available to it to, among other things, verify the calculation and accuracy of the Service Levels recorded and Service Credits, if any, applicable to each relevant Measurement Period.
- (d) In circumstances where service and other records required to evaluate service performance are made or held by the Customer then the Customer shall report the same to the Supplier and shall allow the Supplier access to such records and make original records available to the Supplier for evaluation and audit. Such reporting and access shall be sufficient to enable the Supplier to comply with its relevant reporting obligations under Schedule 9 (**Reporting**). If the Customer fails promptly to provide reports and access to records then the Supplier shall be deemed to have complied with its service performance and related reporting obligations.
- (e) Service Credits are a reduction of the amounts payable in respect of the VPaaS Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with the provisions of Schedule 6 (**Invoicing**).

## 2.6 "Start and Stop the Clock"

- (a) In measuring or determining Supplier performance, the Parties shall operate a process which allows for the resolution time to be temporarily suspended.
- (b) Where Start and Stop the Clock applies, the time for resolution will exclude any period when the clock has stopped.
- (c) The time taken to resolve will be measured from the date and time that the Customer logs a call with the Supplier with the exception that, if monitoring provided by the Supplier as part of the Services identifies (or should have identified) an Incident before the service call is logged by the Customer, the resolution time will be calculated from the date and time that the service monitoring identified the service failure as an Incident.
- (d) Unless otherwise expressly stated when calculating Availability or Incident Resolution involving the Services, the Supplier's responsibility ends when it makes the VPaaS Service available (i.e. when the master operator console is available such that relevant applications using the system can be loaded). For the avoidance of doubt any time required by the Customer to load any application or data shall be disregarded.
- (e) Start and Stop the Clock will apply where:

- (i) further information has been reasonably requested by the Supplier from the Customer in order to resolve the Incident and the Incident cannot be resolved without such information;
- (ii) the Supplier has attempted to contact the Customer in writing in order to progress resolution of an issue, but has been unable to do so for a reason outside the Supplier's control, then, to the extent that the contact is required to be able to progress, the time recorded against the event shall be temporarily suspended until contact is made by the Customer providing that the Supplier continues to try to contact the Customer reasonably frequently or take other steps reasonably possible to progress without Customer contact;
- (iii) the issue has been passed back to the Customer for testing, only restarting when the Customer has completed the test and informed the Supplier of the result;
- (iv) a workaround has been agreed as acceptable and put in place and such workaround provides a reasonable interim solution to the issue;
- (v) an Incident is raised outside the relevant Service Hours. The clock starts only at the start of Service Hours;
- (vi) directly relevant to the resolution of an Incident, delays are caused by the Customer, including delays caused by a failure to perform the Customer's obligations under this Agreement, provided that the Supplier has informed the Customer of such cause of delay and at the point at which such cause of delay is identified;
- (vii) the assessment of an Incident identifies the resolution cannot be immediately resolved because it is dependent on a formal Change being processed and approved via the Change Control Procedure or any Customer service change management process;
- (viii) there is the written agreement of the Customer;
- (ix) the Supplier has been instructed by the Customer not to release or perform the solution;
- (x) access to a relevant Customer site or facility is refused, restricted or delayed - provided that Supplier has followed all required site access procedures and processes of which it has been notified or ought, reasonably, to have known; and
- (xi) directly relevant to the resolution of an Incident, delays are caused by the Customer's Third Party Suppliers or a Services Recipient (including where resolution is reliant on a fix taking place involving such Third Party Supplier or a Services Recipient), provided that the Supplier has informed the Customer of such cause of delay and at the point at which such cause of delay is identified.

## 2.7 Excused performance



- (a) The Supplier shall be deemed to have achieved a Service Level to the extent that, and for such period of time as, any failure to achieve the Service Level reasonably results from any one or more of the following events or conditions:
- (i) any act or omission by the Supplier or its Subcontractors at the request of the Customer, or Third Party Supplier, against the advice of the Supplier or its Subcontractor, either:
    - (A) in writing; or
    - (B) as a result of escalation in accordance with Schedule 8 (**Governance**),  
  
and which advice indicated the potential adverse impact of such action or inaction;
  - (ii) as a result of the rejection by the Customer of a planned maintenance request and at the time of the rejection the Supplier has indicated to the Customer the potential impact of the rejection and the subsequent failure to meet the relevant Service Level arises as a result of the indicated impact;
  - (iii) as a result of the unreasonable delay or rejection by the Customer of an urgent request for unplanned maintenance and at the time of the request the urgency, required timing and importance of it was explained and the Supplier has indicated to the Customer the potential impact of the rejection and the subsequent failure to meet the relevant Service Level arises as a result of the indicated impact;
  - (iv) any act or omission by a Third Party Supplier unless directly caused by an act or omission of the Supplier in carrying out its obligations under this Agreement in relation to such Third Party Supplier;
  - (v) any act or omission by Customer which constitutes a SLA Relief Event in relation to the relevant Services;
  - (vi) any act or omission by the Supplier or a Subcontractor, at the request of the Customer, in contravention of the Change Control Procedure and where the Supplier or its Subcontractor has indicated the potential impact of such act or omission as soon as it has become aware of or ought reasonably to have become aware of such potential impact;
  - (vii) introduction by or on behalf of the Customer of equipment or software into the Technical Infrastructure by the Customer or Services Recipient or Third Party Supplier (for the avoidance of doubt not including the Supplier) in contravention of the Change Control Procedure;
  - (viii) for Equipment which forms part of the Technical Infrastructure which is physically located on the Customer's premises, or Third Party Supplier premises or under the operational control of Customer, where a failure is caused by the following conditions, provided the condition is not directly attributable to the acts or omissions of the Supplier, or Supplier

Personnel or Subcontractors or one for which the Supplier has expressly assumed responsibility:

- (A) electrical power outage or electrical power aberrations (beyond the manufacturer's specifications for the Technical Infrastructure) at the power input of the relevant Equipment;
  - (B) environmental conditions (beyond the manufacturer's specifications for the Technical Infrastructure), except in cases where the Supplier, or a Subcontractor has responsibility for the maintenance and operation of such environmental conditions; and
  - (C) failure due to physical damage that is caused by actions of the Customer, a Services Recipient or Third Party Supplier, except when the Customer, Service Recipient or Third Party Supplier are acting in accordance with the Supplier's instructions; and
- (ix) any failure which is the subject of the restoration of a system, provided that the Supplier has complied with its obligations under Schedule 2 (**Services**) in respect of Business Continuity and Disaster Recovery and the Services are otherwise being provided in accordance with the agreed disaster recovery plans.
- (b) Pending a refresh or any remedial action agreed and executed as a Project under Schedule 3 (**Projects and Rate Based Services**) the following shall apply to any item of Technical Infrastructure listed under Annex 2.1 to Schedule 2 (**Services**) as a component on the *Redacted*:
- (i) the Supplier shall not be liable in respect of any failure to comply with its obligations to provide the Services in accordance with this Agreement; and
  - (ii) the Supplier shall be relieved of its obligations to meet the Service Levels set out in this Schedule 4 (**Service Measurement**) and shall not be liable in respect of any Service Credits,

***Redacted***

- (c) The VPaaS Service Levels set out in this Schedule shall not apply in respect of the VPaaS Services to the extent that at the time of any applicable Service Level Failure either:
- (i) the OCP Usage Limit of the relevant VPaaS Service has exceeded that available on the Technical Infrastructure for that VPaaS Service during the hour up to failure; and/or
  - (ii) the relevant VPaaS Service is adversely impacted as a result of earlier demands in excess of the OCP Usage Limit and the relevant VPaaS Service has not recovered from such demands,

in which case the Supplier shall use reasonable endeavour to provide the VPaaS Services, however, its obligation to achieve the Service Levels in respect of the

performance in any relevant Measurement Period shall only be on a reasonable endeavours basis and Service Credits shall not apply.

- (d) The requirement to monitor the OCP Usage Limit is the Customer's. The Customer has the ability to do real-time monitoring of OCP usage for themselves on VME/superNOVA using the SMON interface.
- (e) On MVE, the interface the Customer shall use will be removed and the Customer will need to use VSMON (the new enterprise monitoring tool based on QoS). As part of migration the Customer will be given access to such changed tooling or otherwise provided with the means to manage against the OCP Usage Limit.

## 2.8 System Maintenance for VPaaS Services

- (a) The Supplier shall provide all reasonable assistance to the Customer in the creation and maintenance of rolling maintenance schedules with regard to the systems provided under the CHIEF VPaaS Services and Prime VPaaS Services which are to be agreed with the Supplier, such agreement of maintenance opportunities not to be unreasonably withheld or delayed by either Party.
- (b) The Maintenance Schedule shall be discussed and agreed between the Parties in accordance with Schedule 8 (**Governance**) and Schedule 7 (**Change Management Procedure**) as System Changes.
- (c) When Non-Core Hours are defined for an element of the VPaaS Services, maintenance shall normally be scheduled to take place during those Non-Core Hours.
- (d) When Non-Core Hours are not defined, maintenance shall normally be scheduled to take place between the hours of:
  - (i) 16:00 and 20:00 on a Sunday for an element of CHIEF VPaaS services; and
  - (ii) 06:00 and 23:59 on a Sunday for an element of PRIME VPaaS services
- (e) When either Party wishes to carry out any maintenance to the systems provided under the VPaaS Services (other than emergency maintenance), it shall ensure that:
  - (i) the timing of the planned maintenance is in accordance with the Maintenance Schedule or is as otherwise agreed in writing with the other party's representative at least twenty (20) Working Days in advance of such planned maintenance;
  - (ii) once agreed with the other Party's representative the planned maintenance which shall be Permitted Maintenance is forthwith entered onto the Maintenance Schedule; and
  - (iii) the Permitted Maintenance is subsequently carried out as agreed.

- (f) Unless otherwise agreed, the total period of downtime for the Services for Permitted Maintenance, which the Supplier will be allowed to book in any one (1) month for each VPaaS Service is shown in the following table:

Table: Permitted Maintenance available to the Supplier

| Service                              | Permitted Maintenance per Month (in hours)                |
|--------------------------------------|-----------------------------------------------------------|
| CHIEF Live Service (PT6)             | 3                                                         |
| CHIEF Development Services (BY3,LD1) | 8                                                         |
| PRIME Live Services (CEX4,S3,S4,S5)  | 8 increasing to 10 or more by agreement with the Customer |
| PRIME Dev Services (CEX8,T0,T1,T3)   | No Limit                                                  |
| PRIME Clone Services (A4,A5,A6)      | No Limit                                                  |
| PRIME Others                         | No Limit                                                  |

- (g) The Parties, acting reasonably, shall also agree on a monthly basis the downtime period permitted for patching.
- (h) The Parties, acting reasonably, shall agree on a monthly basis how the total downtime period permitted for maintenance on such systems shall be allocated between the Parties. The Customer shall have regard to the Supplier's contractual obligations including the provisions of this Schedule and Schedule 2 (**Services**); Schedule 12 (**Security**); and Schedule 13 (**Standards and Regulations**) in making sufficient time available to the Supplier in accordance with this Section 2.8(h). In the event that the Parties fail to agree on an apportionment and allocation of downtime for maintenance, such apportionment will be referred to the Escalation Process.
- (i) The maximum hours allowed for Permitted Maintenance and any downtime which is the responsibility of, or caused by, the Customer, will be excluded from the total number of hours against which Availability is calculated for each Measurement Period. As a consequence availability is defined by reference to the total contractual Service Hours in a month minus Permitted Maintenance hours and any period of downtime for which the Supplier is not responsible.
- (j) In the event that a planned period of Permitted Maintenance is cancelled by the Supplier in advance, the planned outage shall not be counted as Unavailability of that relevant service element unless notice of cancellation from the Supplier is received by the Customer later than twenty-four (24) hours in advance of the planned start, or as agreed otherwise by the Parties in writing or by email. In the event that the Supplier is unable to give twenty-four (24) hours' notice and has demonstrated that it has made all reasonable efforts to inform the Customer as soon as possible, the Customer may in such circumstances decide not to count the time as a period during which a Service was unavailable.
- (k) Either Party may carry out any necessary emergency maintenance (which it is competent to perform) where it reasonably suspects that an element of the

CHIEF IES System or VPaaS Platform or the CHIEF VPaaS Services / Prime VPaaS Services (or any part thereof) has, or may have, developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the CHIEF IES System or VPaaS Application or the CHIEF VPaaS Services / Prime VPaaS Services (or any part thereof). The Party which wishes to carry out emergency maintenance in accordance with this provision shall normally give at least one (1) hours' notice, (or as much longer notice as is reasonably practicable in the specific circumstances) to the other Party's representative prior to carrying out any emergency maintenance and shall provide full details of its actions and maintenance performed as soon as reasonably possible.

- (l) In addition to Permitted Maintenance periods booked in advance as planned maintenance, the following categories of any downtime shall also be excluded from the total number of hours of Unavailability in the relevant reporting period when calculating Availability:
  - (i) unavoidable downtime periods, agreed in advance, for the purpose of implementing, at the request of the Customer (and in accordance with the provisions of Schedule 7 (**Change Control Procedure**)) a new release of a system component supporting one or more of the CHIEF VPaaS Services or Prime VPaaS Services, over and above the maximum number of the Customer requested releases for that month unless the downtime arises as a result of an attempt to implement the release during a previous period of downtime which was unsuccessful owing to a failure on the part of the Supplier;
  - (ii) unavoidable downtime periods between commencement and completion of the invocation of a disaster recovery process, where the invoker of the disaster recovery process is the Customer, and where the invocation does not arise from a Default of the Supplier; and
  - (iii) any downtime periods in excess of one (1) hour between the Supplier's request for invocation of the disaster recovery process, and the Customer's assent being sent to the Supplier by the agreed means of communication.

## 2.9 Reporting of Incidents

- (a) This Section 2.9 applies generally to performance by the Supplier in respect of the CHIEF VPaaS Service Levels and Prime VPaaS Service Levels.
- (b) Both Parties shall promptly report Incidents to the other Party via the relevant service desk or other agreed method ("**Incident Reports**").
- (c) Both Parties shall ensure that all Incidents are logged immediately on receipt of notification, where relevant on the Incident toolset and, where applicable, the Supplier shall provide the information in Section 2.9(e) below.
- (d) Where the relevant service desk receives more than one report of an Incident then all such reports shall be logged on the applicable Incident log (but for the avoidance of doubt, the first report communicated to the other Party shall be deemed to be the Incident Report). However where an Incident is initially

logged with a lower priority but later given a higher priority the Supplier shall only be responsible for resolution against the higher priority from the time such higher priority was actually logged and communicated.

- (e) The Customer, through the relevant service desk, shall provide the following details, as a minimum, for recording in the toolset agreed from time to time between the Parties for Incidents in respect of each Incident:
  - (i) a unique report number (report numbers shall be applied sequentially);
  - (ii) the date and time the report is received at the service desk;
  - (iii) the nature and location of the Incident;
  - (iv) the person and organisation making the report;
  - (v) the priority assigned to the Incident by the Customer in discussion with the Supplier (in accordance with this Schedule);
  - (vi) an estimate (produced with all due care and diligence) of the number of the users that are affected by the Incident (whether they are individual users or groups of users);
  - (vii) the action intended to be taken or which has been taken to rectify the Incident;
  - (viii) details of any communication with the Supplier's representative in connection with the Incident;
  - (ix) notes/comments regarding any mitigating circumstances with regard to the Incident;
  - (x) agreed plans for remedying the Incident and/or for preventing the Incident from re-occurring including details where applicable of the estimated time within which such Incident will be remedied;
  - (xi) the reasons for any inability of the Customer and/or the Supplier to meet the operating service level so as to resolve the Incident; and
  - (xii) any Start and Stop the Clock information, including when the Incident is closed.
- (f) The Customer shall determine, in discussion with the Supplier, the priority level which relates to each Incident, as determined in accordance with this Schedule. The Parties shall respond to the Incident in accordance with this Schedule and the priority level agreed.

## 2.10 Calculation of Service Credits

- (a) Any Service Credits will be applied against the first Invoice submitted following the Month when the Report showing the Service Level Failure is issued by the Supplier.

- (b) If a single Incident results in multiple Service Level Failures, as determined through any root-cause analysis undertaken, the Customer will not be entitled to receive a Service Credit for each of the multiple Service Level Failures but will receive the highest single Service Credit applicable to such Incident.
- (c) In respect of each Service Level Failure to which Clause 7.5 applies, if the Customer does not notify the Supplier of its intention to seek other remedies under this Agreement or at Law in respect of the Service Level Failure that relates to such Service Credit within six (6) months of the applicable Service Level Failure, then such Service Credit will be the sole and exclusive remedy for such Service Level Failure.
- (d) The Annexures to this Schedule set out, and any agreed Supplier Proposal may set out, specific details regarding the calculation of Service Credits for the applicable Service.

## 2.11 Disputes in respect of Supplier Performance

Any disputes in relation to this Schedule 4 (**Service Measurement**) shall first be referred to the Contract Management Meetings. Any disputes that are not resolved at such meetings shall be resolved by escalations in accordance with the Escalation Process.

## 2.12 Key Business Events

- (a) The Parties are committed to ensuring that certain business critical, public-facing Customer business processes or events operate effectively so that the Customer's reputation is protected and have therefore agreed to focus more management attention on these in the form of Key Business Events (KBEs). Therefore, the Parties shall subsequently agree, introduce, monitor and measure KBEs in accordance with these agreed arrangements as a Change via the Change Control Procedure.
- (b) The Parties shall formalise a process at an operational level to identify KBEs and describe them in an agreed standard form.
- (c) On an annual basis commencing on the Effective Date (and updated on a rolling Quarterly basis), the Customer shall select up to ten (10) KBEs to be measured and monitored. The Customer shall nominate the ten (10) KBEs by the anniversary of the Effective Date for the twelve (12) months period during which they are to operate. Measures for each KBE will be agreed no less than six (6) weeks in advance of the beginning of that KBE.
- (d) The measures for each KBE will include objective measures of activities within the scope of the Agreement which are important in ensuring the attainment of the Customer's business objectives.
- (e) The Parties shall further develop the measurement of KBEs in the following category: objective measures in the form of mechanically measurable sets of success criteria linked to the Customer's business objectives.
- (f) The Customer shall ensure that any request for agreement of KBEs shall also allow sufficient Permitted Maintenance in the Maintenance Schedule and ensure

that the Supplier's entitlement to Permitted Maintenance is protected to allow performance and maintenance notwithstanding the KBEs. The Supplier may reasonably refuse a KBE if the Customer has failed to provide for an appropriate Maintenance Schedule and sufficient maintenance hours.

- (g) The Parties recognise that for certain KBEs, the Customer may request on a non-binding non contractual basis the Supplier to provide higher levels of service than are set out in Service Levels. To meet the Customer requirements, the Parties agree in the first instance to explore methods of delivering higher levels of service which do not involve investment by or cost to the Supplier or higher Service Charges. If such methods cannot be found, then the Customer commits either to fund the investment or to cover the costs or to accept higher Service Charges required or to accept the normal contractually specified level of service.
- (h) Any agreement in respect of KBEs and/or amendments to existing Service Levels shall be agreed in accordance with Schedule 7 (**Change Control Procedure**).
- (i) KBE Measures are expressly excluded from the calculation of Service Credits and Service Credits shall not be payable in respect of any failure to achieve enhanced Service Levels.

## 2.13 Performance Monitoring and Performance Review

Section 6 of Schedule 9 (**Reporting**) sets out the provisions regarding the monitoring and reporting of the Supplier's performance.



## ANNEX 4-1

### CHIEF VPaaS SERVICE LEVELS AND SERVICE CREDITS

#### 1. INTRODUCTION

- 1.1 The objective of this Annex 4-1 is to set out the basis of performance by the Supplier of the CHIEF VPaaS Services to:
- (a) ensure that the CHIEF VPaaS 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 (as a result of overpayment of Charges) resulting in the event of the Supplier's failure to deliver the level of CHIEF VPaaS Service which it has contracted to deliver, such mechanism being represented by way of a price adjustment achieved by the payment of sums by way of Service Credits; and
  - (c) incentivise the Supplier to meet the CHIEF VPaaS Service Levels and to remedy any failure to meet the CHIEF VPaaS Service Levels expeditiously.

#### 2. CHIEF VPaaS SERVICE LEVELS

- 2.1 Table 4-1 to this Annex 4-1 sets out Service Levels for those parts of the CHIEF VPaaS Services, the performance of which the Parties have agreed to measure.
- 2.2 Performance of each of the CHIEF VPaaS Service Level(s) in respect of the CHIEF VPaaS Services referred to in this Annex 4-1 shall be monitored by the Customer who shall prepare a report detailing the level of service which was achieved in accordance with the provisions of this Schedule and Annex 4-1. The Customer shall also provide relevant Customer Reports in accordance with Schedule 9 (**Reporting**).
- 2.3 The Supplier shall provide the CHIEF VPaaS Services in such a manner that the CHIEF VPaaS Service Levels are achieved (or exceeded).

#### 3. CHIEF VPaaS SERVICES SERVICE CREDITS

- 3.1 If the level of performance by the Supplier of the CHIEF VPaaS Services falls below the Target Performance Level set out in Table 4-1 (CHIEF VPaaS Service Levels) below, the Supplier shall pay to the Customer the appropriate Service Credit calculated by reference to the Charges for the CHIEF VPaaS Services in accordance with Table 4-1.
- 3.2 Service Credits for CHIEF VPaaS Service Levels shall be calculated using the percentage of the appropriate Service Credit element and applying it to the relevant monthly CHIEF VPaaS Service Charge of £1,413,030 for the relevant calendar month. The Service Credits thus calculated shall be set against the monthly CHIEF VPaaS Service Charges in order to reduce the same by the Service Credit amount. In all cases the Service Credits calculated shall ignore any CHIEF Excess GPLI Charge when carrying out such calculations.

**TABLE 4-1**  
**CHIEF VPaaS SERVICE LEVELS**

| <b>AVAILABILITY of the CHIEF infrastructure environments for the CHIEF IES System</b>                     |                                                                                                                                           |                           |                                                |                                 |                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------------------------------|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>What</b>                                                                                               | <b>Target Performance Level</b>                                                                                                           | <b>Measurement Period</b> | <b>Measurement</b>                             | <b>Who Measures and reports</b> | <b>Service Credit on failure to meet Target Performance Level</b>                                                                                                                      |
| <b>System Availability</b> – of VPaaS infrastructure environment in use for IES <b>Live</b> (production)  | 99.5% or better**                                                                                                                         | Calendar Monthly          | Measured 24 hours x 7 days over calendar month | Customer                        | 5% of the CHIEF VPaaS Service Charges monthly charge* for the relevant calendar month.                                                                                                 |
| <b>System Availability</b> – of VPaaS infrastructure environment in use for IES <b>Live</b> (production)  | In every 24-hour day starting 00:01 hours<br>(Service Downtime is < 60 minutes) AND number of (Priority 1 or Priority 2) Incidents is < 3 | Calendar Monthly          | By Incidents recorded                          | Customer                        | 1% of CHIEF VPaaS Service Charges monthly charge* for the relevant calendar month (if BOTH the Service Downtime AND the number of Priority Incidents exceed the 24-hour daily target). |
| <b>System Availability</b> – for VPaaS infrastructure environment in use for IES <b>Live</b> (production) | In any calendar month, Service Downtime < 8 hours AND number of Priority 1 or Priority 2 Incidents < 11                                   | Calendar Monthly          | By Incidents recorded                          | Customer                        | 10% of CHIEF VPaaS Service Charges monthly charge* for the relevant calendar month if BOTH the Service downtime                                                                        |

|                                                                                                                       |                   |                         |                                                                                |                         |                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------|-------------------|-------------------------|--------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------------|
|                                                                                                                       |                   |                         |                                                                                |                         | AND the number of priority Incidents exceed the monthly target).                     |
| <b>System Availability</b> – for VPaaS infrastructure environment in use for IES <b>Training</b>                      | 99.5% or better** | Not measured separately | Not measured separately                                                        | Not measured separately | Not applicable – Service Credits are not payable.                                    |
| <b>System Availability</b> – for VPaaS infrastructure environment in use for IES <b>Acceptance Test (HMAT)</b>        | 90% or better     | Calendar Monthly        | Measured during Normal Business Hours for IES <b>Acceptance Test (HMAT)</b>    | Customer                | 0.5% of CHIEF VPaaS Service Charges monthly charge* for the relevant calendar month. |
| <b>System Availability</b> – for VPaaS infrastructure environment in use for IES <b>Trade Test (HMUT)</b>             | 90% or better     | Calendar Monthly        | Measured during Normal Business Hours for IES <b>Trade Test (HMAT)</b>         | Customer                | 0.5% of CHIEF VPaaS Service Charges monthly charge* for the relevant calendar month. |
| <b>System Availability</b> – for VPaaS infrastructure environment in use for IES <b>Supplementary Test (AT01-BY3)</b> | 90% or better     | Calendar Monthly        | Measured during Normal Business Hours for IES <b>Supplementary Test (AT01)</b> | Customer                | Not applicable – Service Credits are not payable.                                    |
| <b>System Availability</b> – for VPaaS infrastructure environment in use for IES <b>Test (LD1)</b>                    | 90% or better     | Calendar Monthly        | Measured during Core Hours for IES <b>Test (LD1)</b>                           | Customer                | Not applicable – Service Credits are not payable.                                    |

\*Service Credits are calculated against the CHIEF VPaaS Service Charges monthly charge (£1,413,030) ignoring any CHIEF Excess GPLI Charge

\*\* In the event of a breach by the Customer in achieving VPaaS Refresh Deadlines in accordance with Clause 6.10 for the CHIEF VPaaS Services these Availability Thresholds are reduced to 90% or better and the Service Levels relating to System Availability measured in every 24 hours or any calendar month do not then apply nor do these then attract Service Credits.

| <b>INCIDENT RESOLUTION for the CHIEF VPaaS Services - IES Support</b>  |                                                                                                                                                      |                           |                                                            |                                 |                                                                                   |
|------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------------------------------------------|---------------------------------|-----------------------------------------------------------------------------------|
| <b>What</b>                                                            | <b>Target Performance Level</b>                                                                                                                      | <b>Measurement Period</b> | <b>Measurement</b>                                         | <b>Who Measures and reports</b> | <b>Service Credit on failure to meet Target Performance Level</b>                 |
| <b>Incident resolution</b><br>– for a <b>Priority 1 and 2</b> Incident | <b>Either (1)</b><br>95% in resolution time and 100% within 200% of resolution time where the volume of incidents is equal to or greater than 20, or | Monthly                   | Incident Log - P1 and P2 as defined in Exhibit 4-1-1 below | Customer                        | 4% of CHIEF VPaaS Service Charges monthly charge* for the relevant calendar month |
|                                                                        | <b>Or (2)</b><br>90% in resolution time and 100% within 200% resolution time where the volume of incidents is between 10 and 19,                     | Monthly                   |                                                            |                                 |                                                                                   |
|                                                                        | <b>Or (3)</b><br>Where the volume of incidents is less than 10 then 100% within 200% resolution time                                                 | Monthly                   |                                                            |                                 |                                                                                   |

\*Service Credits are calculated against the CHIEF VPaaS Service Charges monthly charge (£1,413,030) ignoring any CHIEF Excess GPLI Charge.

In the event of a breach by the Customer in achieving MVE Readiness Deadlines in accordance with Clause 6.10 for the CHIEF VPaaS Services these Incident Resolution times do not then apply nor do these then attract Service Credits.

| CHIEF VPaaS Services - IES Disaster Recovery                                                                                                                                                                         |                                                                           |                                                             |                                                                                                                                                                                              |                          |                                      |                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------|------------------------------------------------------------|
| What                                                                                                                                                                                                                 | Target performance Level                                                  | Measurement Period                                          | Measurement                                                                                                                                                                                  | Who Measures and reports | Aggregate number of Service Failures | Service Credit on failure to meet Target Performance Level |
| IES – Live Service – <b>recovery of service from total loss</b> (total loss is defined as both the Customer and Trade users unable to access CHIEF) and Customer decides to invoke DR after discussion with Supplier | <1 Hour from an authorised request from Customer to Supplier to invoke DR | Per total loss incident, excess counted as Service Downtime | This interval is measured as the time between the Customer invoking and formally requesting DR and the Customer being advised by the Supplier that they can now login to manually reload IES | Customer                 | N/A                                  | NIL - Covered by Availability Service Credit               |
| IES Test Services (HMAT, HMUT, AT01 but excluding LD1) – <b>recovery of service from total loss</b>                                                                                                                  | <1 Working Day from formal authorised request                             | Per total loss incident, excess counted as Service Downtime | Whole service                                                                                                                                                                                | Customer                 | N/A                                  | Not applicable                                             |
| <b>Recovery of Disaster Recovery</b>                                                                                                                                                                                 | 12 weeks from formal authorised request                                   | Monthly                                                     | Whole service                                                                                                                                                                                | Customer                 | 2 separate/ individual events during | 2.5% of CHIEF VPaaS Service Charges monthly                |

|                                                          |  |  |  |  |                  |                                                             |
|----------------------------------------------------------|--|--|--|--|------------------|-------------------------------------------------------------|
| <b>capability</b><br><b>y</b><br>following<br>total loss |  |  |  |  | contract<br>life | service<br>charge* for<br>the relevant<br>calendar<br>month |
|----------------------------------------------------------|--|--|--|--|------------------|-------------------------------------------------------------|

\*Service Credits are calculated against the CHIEF VPaaS Service Charges monthly charge (£1,413,030) ignoring any CHIEF Excess GPLI Charge

**EXHIBIT 4-1-1****INCIDENT AND PROBLEM CATEGORISATION FOR CHIEF VPAAS SERVICES****1. INCIDENTS**

1.1 Incidents are categorised by priority.

1.2 The following are the priority categories set by the Customer in respect of the CHIEF VPaaS Services:

| <b>Incidents</b> |                                                                                                                                                                                                                                                 |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Priority</b>  | <b>Definition</b>                                                                                                                                                                                                                               |
| Priority 1       | Severe business disruption: business unit or sub-unit unable to operate, critical system component failed or severely impaired. Loss of one Service which makes the business performance or continued performance of any one system impossible. |
| Priority 2       | Major business disruption: critical user or user group unable to operate, or business unit experiencing significant reduction in system performance.                                                                                            |
| Priority 3       | Minor business disruption: single user unable to operate with no circumvention available.                                                                                                                                                       |

| <b>Priority</b>   | <b>Response Time Target</b> | <b>Resolution Target (Fix/Work-around)</b> |
|-------------------|-----------------------------|--------------------------------------------|
|                   |                             | Infrastructure Incidents                   |
| <b>PRIORITY 1</b> | 0.5 hours                   | 2 hours                                    |
| <b>PRIORITY 2</b> | 2 hours                     | 4 hours                                    |
| <b>PRIORITY 3</b> | 1 Working Day               | 4 hours                                    |
| <b>PRIORITY 4</b> | 2 Working Days              | 40 hours                                   |

**2. PROBLEM COORDINATION**

1.3 Whilst many Incidents may be isolated and resolved by the application of a fix or workaround, there are occasions where numerous Incidents may be linked to a common fault.

1.4 In these cases, a central problem management team will coordinate communication about the Problem and liaise with relevant teams working on the resolution of the underlying Problem.

1.5 This process may include the carrying out of a "Root Cause Analysis" of the Problem to identify areas of failure, possible process errors and establish an action plan to ensure resolution of the Problem.

1.6 The Parties shall agree an action plan and to the extent that the Problem arises within the area of responsibility of the Supplier it will resolve the Problem within the timescales agreed with the Customer.

1.7 Problems

Problems are categorised for priority:

|                    |                                                                            |                                                                                                 |
|--------------------|----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Problem Priority   | Defines the order of the analysis and diagnosis work and the timescale.    | Set from the list below when the Problem is raised.<br>P1 – High<br>P2 – Medium<br>P3 – Low     |
| Problem Resolution | Defines the end-point from which the Problem resolution time is calculated | Problem resolved in unit tested code awaiting release, or system owner acceptance of resolution |



## **ANNEX 4-2**

### **PRIME VPaaS SERVICE LEVELS AND SERVICE CREDITS**

#### **1. INTRODUCTION**

- 1.1 The objective of this Annex 4-2 is to set out the basis of performance by the Supplier of the Prime VPaaS Services to:
- (a) ensure that the Prime VPaaS 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 (as a result of overpayment of Charges) resulting in the event of the Supplier's failure to deliver the level of Prime VPaaS Service which it has contracted to deliver, such mechanism being represented by way of a price adjustment achieved by the payment of sums by way of Service Credits; and
  - (c) incentivise the Supplier to meet the Prime VPaaS Service Levels and to remedy any failure to meet the Prime VPaaS Service Levels expeditiously.
- 1.2 This Annex 4-2 (together with various other materials referred to herein, and thereby incorporated herein) sets out, within its sections, certain quantitative Key Performance Indicators against which the specified services shall be measured and the associated Service Credit regimes.

#### **2. PRIME SERVICE LEVELS**

##### **2.1 Service Levels**

- (a) The Prime VPaaS Services Service Levels shall comprise the Key Performance Indicators set out in Exhibit 4-2-1.
- (b) Subject to the other express terms of this Agreement the Supplier shall perform the applicable Prime VPaaS Services to meet or exceed the Prime VPaaS Service Levels at all times.
- (c) The Supplier shall monitor its performance against each Prime VPaaS Service Level and shall send the Customer a report detailing the level of service actually achieved in accordance with Exhibit 4-2-1 of this Schedule. The Customer acknowledges that it needs to comply with its reporting obligations in order to ensure that the Supplier has relevant information reasonably required for such Service Level reporting by the Supplier.
- (d) Subject to section 2.1(e) below, if the Supplier fails to measure or report on a Service Level in accordance with Exhibit 4-2-1 of this Schedule it shall be deemed to have committed a Service Level Failure for that Prime VPaaS Service Level for that Measurement Period, unless otherwise agreed by the Customer. In such circumstances, the Failure Severity Level shall be deemed to be the least severe available for that Prime VPaaS Service Level.

- (e) In the event that the Supplier is reliant on Customer tools to measure or report on a Service Level and such Customer tool fails to provide the necessary measurements or reporting then the Supplier shall not be deemed to have failed to meet the applicable Target Performance Level for that Service Level for that Measurement Period.
- (f) Service Credits, shall accrue for any relevant Service Level Failure and shall be calculated in accordance with this Annex 4-2.

## 2.2 Failure Severity Levels

- (a) Service Level Failures for Prime VPaaS Service Levels are further divided into the following "**Failure Severity Levels**":
  - (i) "**Minor KPI Failure**": a level of performance that falls below the Target Performance Level, but exceeds the Minimum Performance Level; and
  - (ii) "**Major KPI Failure**": a level of performance that falls below Minimum Performance Level.

## 2.3 PRIME VPAAS SERVICES SERVICE CREDITS

- (a) Prime VPaaS Service Levels and associated Service Credits shall be separately calculated by reference to the separate live Technical Infrastructure for each of CESA and VAT and the allocation of Charges based on GPLI consumed by each in accordance with the following table:

| Application For which Service Credits Payable | Live (Runtime) Instance | Value for calculating Service credits                                                                                                                                                                                                                                        |
|-----------------------------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CESA</b> Core                              | S3, S4, S5,Z3           | The value to be used to calculate the monthly revenue against which Service Credits are calculated shall be by reference to monthly Prime VPaaS Service Charges apportioned to CESA proportionate to the total GPLI used in the relevant month for all Prime VPaaS Services. |
| <b>VAT</b>                                    | CEX4                    | The value to be used to calculate the monthly revenue against which Service Credits are calculated shall be by reference                                                                                                                                                     |

|  |  |                                                                                                                                                    |
|--|--|----------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | to monthly Prime VPaaS Service Charges apportioned to VAT proportionate to the total GPLI used in the relevant month for all Prime VPaaS Services. |
|--|--|----------------------------------------------------------------------------------------------------------------------------------------------------|

Note: For the purposes of calculating Availability of CESA, if S3 is Available then the applicable VPaaS Service is still Available. This is because if S4 and S5 are Unavailable there will be some reduced capacity but the service is still Available.

- (b) If the level of performance of the Supplier during a Measurement Period meets or exceeds the Target Performance Level in respect of a KPI, no Service Credits shall accrue to the Supplier in respect of that KPI.
- (c) If the level of performance of the Supplier during a Measurement Period is below the Target Performance Level or the Minimum Performance Level in respect of a KPI, Service Credits shall accrue to the Supplier in respect of that KPI as set out in Table 4-2-1-2 in Exhibit 4-2-1.
- (d) Service Credits for Prime VPaaS Service Levels shall be calculated using the percentage of the appropriate Service Credit element and applying it to the relevant 'Monthly value for use in calculating Service Credits' set out in Table 4-2-1-1 in Exhibit 4-2-1 for the relevant calendar month and apportioned between CESA and VAT in accordance with Section 2.3(a) above.
- (e) Service Credits accrued by the Supplier for all Service Level Failures in a Measurement Period shall be added together to give the total Service Credit due from the Supplier in respect of that Measurement Period.
- (f) Service Credits (if any) shall be invoiced in accordance with Schedule 5 (**Charges**).
- (g) In no event will the total amount of Service Credits for Prime VPaaS Services, in respect of Service Level Failures for Prime VPaaS Service Levels occurring during any Measurement Period, exceed an amount equal to twelve point five percent (12.5%) of one hundred and fifty per cent (150%) of the 'Monthly value for use in calculating Service Credits' for the applicable Measurement Period (as apportioned between CESA and VAT in accordance with Section 2.3(a) above) (the "**Service Credit Cap**").
- (h) Service Credit Formula

Prime Service Level Service Credits (**SC**) = **MV x SCV**

where:

**MV** = Monthly value for use in calculating Service Credits' set out in Table 4-2-1-1 in Exhibit 4-2-1 for the relevant calendar month and apportioned between CESA and VAT in accordance with Section 2.3(a) above

**SCV** = The applicable Service Credit Value (based on the Failure Severity Level) set out in Table 4-2-1-2 in Exhibit 4-2-1 of this Annex 4-2

N.b. SC is subject to the Service Credit Cap

## 2.4 Creation and modification of Prime VPaaS Service Levels

New Service Levels for Prime VPaaS Services may only be added to the Agreement upon agreement between the Parties.

## 2.5 Repeat Prime VPaaS Service Level Failures

- (a) If a Prime VPaaS Service Level Failure occurs in respect of the same Service Level in any two (2) consecutive Measurement Periods, the second and any subsequent such Prime VPaaS Service Level Failure shall be a **"Repeat Prime VPaaS Service Level Failure"**.
- (b) In each Performance Monitoring Report, the Supplier shall track and report on the current number of sequential Repeat Prime VPaaS Service Level Failures for each Prime VPaaS Service Level (the **"Repeat Failure Count"**). For example, if a Prime VPaaS Service Level Failure has occurred in three (3) sequential Measurement Periods, the Repeat Failure Count will be two (2).
- (c) The Repeat Failure Count shall be a count of the number of sequential Repeat Prime VPaaS Service Level Failures. The Failure Severity Level is irrelevant to the Repeat Failure Count. Any Minor KPI Failure or Major KPI Failures shall each be counted as one increment of the Repeat Failure Count.
- (d) When a Prime VPaaS Service Level with a Repeat Failure Count above zero (0) meets its Target Performance Level, the Repeat Failure Count shall be reset to zero (0).
- (e) Without prejudice to the Customer's other rights and remedies, there shall be no upper limit to the Repeat Failure Count. However, a Repeat Failure Count of four (4) shall be a Material Default.
- (f) The amount of Service Credit that shall accrue to the Supplier in respect of a Measurement Period for a Prime VPaaS Service Level Failure that is a Repeat Prime VPaaS Service Level Failure shall be calculated as follows:

$$\mathbf{SC = P + ( P * RFC * 0.5 )}$$

where:

**SC** = the amount of Service Credits that shall accrue for the relevant Repeat Prime VPaaS Service Level Failure;

**P** = the applicable amount of Service Credits for that Prime VPaaS Service Level Failure depending on the Failure Severity Level for that Repeat Prime VPaaS Service Level Failure; and

**RFC** = the Repeat Failure Count.

**EXHIBIT 4-2-1****PRIME VPAAS SERVICE LEVELS****1. PRIME VPAAS SERVICE CREDITS**

For the purposes of calculating the basis of the amounts against which Service Credits for the Prime VPaaS Service Levels shall be calculated, the Parties shall use the value of the committed GPLI Floor for the relevant month during the Term (as may be adjusted down in Years 4 and 5) in the following table:

| <b>Table 4-2-1-1 (Monthly sum for use in calculating VPaaS Prime Service Credits)</b>                           |                                                                                                                |                                                                                                                |                                                                                                                |                                                                                                                                                                                                                           |                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                 | <b>For each month in Year 1 Commencing on 1<sup>st</sup> July 2020</b>                                         | <b>For each month in Year 1 Commencing on 1<sup>st</sup> July 2021</b>                                         | <b>For each month in Year 1 Commencing on 1<sup>st</sup> July 2022</b>                                         | <b>For each month in Year 1 Commencing on 1<sup>st</sup> July 2023</b>                                                                                                                                                    | <b>For each month in Year 1 Commencing on 1<sup>st</sup> July 2024</b>                                                                                                                                                    |
| <b>Based on a Committed Floor of (GPLI) and ignoring any sums payable in respect of Excess GPLI and storage</b> | <i>Redacted</i>                                                                                                | <i>Redacted</i>                                                                                                | <i>Redacted</i>                                                                                                | <i>Redacted</i>                                                                                                                                                                                                           | <i>Redacted</i>                                                                                                                                                                                                           |
| <b>Monthly value for use in calculating Service Credits</b>                                                     | One twelfth of £20,826,063 apportioned as between VAT and CESA in accordance with the Table at Section 2.3 (a) | One twelfth of £20,826,063 apportioned as between VAT and CESA in accordance with the Table at Section 2.3 (a) | One twelfth of £20,826,063 apportioned as between VAT and CESA in accordance with the Table at Section 2.3 (a) | One twelfth of £8,558,656 (or in the event of a GPLI reduction in this Year this sum adjusted downward to reflect any GPLI reduction) apportioned as between VAT and CESA in accordance with the Table at Section 2.3 (a) | One twelfth of £6,828,217 (or in the event of a GPLI reduction in this Year this sum adjusted downward to reflect any GPLI reduction) apportioned as between VAT and CESA in accordance with the Table at Section 2.3 (a) |

## 2. SERVICE LEVELS

| Table 4-2-1-2 (Prime VPaaS Service Levels)            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                           |                         |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------------|
| Service Level                                         | 1. Prime VPaaS Services Availability                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                           |                         |
| Description                                           | The Availability of the live (production) Prime VPaaS Services for either or both of CESA or VAT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                           |                         |
| Reporting Period                                      | Calculated on a monthly calendar basis starting on the first complete calendar month following the Effective Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                           |                         |
| Method of Calculation                                 | <p>Availability is:</p> $\frac{\text{Total Service Hours} - \text{Sum ( Lost Service Hours )}}{\text{Total Service Hours}} \times 100$ <p>where Total Service Hours = 720* the number of servers carrying live production instances of VME or MVE</p> <p>Total Service Hours is calculated against the baseline service hours to be provided under the Prime VPaaS Services for the live/production Prime VPaaS Services (less Permitted Maintenance) and is fixed unless agreed otherwise by the parties.</p> <p>Where the Customer is using a DR system in live then availability of that system shall be considered the live/production service.</p> <p>Lost Service Hours are calculated in accordance with this Schedule as the time between the start of an Incident where live production instances of VME or MVE is Unavailable, and the time of Incident Resolution</p> <p>When S3 is available, loss of one of S4 or S5 instances does not count as Lost Service Hours as full CESA functionality can continue.</p> |                           |                         |
| Exclusions                                            | <p>Lack of availability not attributable to a failure of the Supplier’s Prime VPaaS Services, including matters set out in this Schedule 4 and expressly excluding:</p> <ul style="list-style-type: none"><li>• the Prime VPaaS Applications or any other application outside the scope of the Suppliers Prime VPaaS Services obligations;</li><li>• the failure of services provided by the Customer or a Third Party Supplier including the network or other infrastructure for which the Supplier is not responsible;</li><li>• agreed maintenance windows; and</li><li>• outages outside of supported Service Hours.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                            |                           |                         |
| Target Performance Levels and Failure Severity Levels |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                           |                         |
|                                                       | Target Performance Level                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Minimum Performance Level | No Refresh Availability |
|                                                       | 99.970%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 99.875%                   | 90%                     |

|                                                                                                                                                                      |                                                                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Service Credit Value for Minor KPI Failures</b> (a level of performance that falls below the Target Performance Level, but exceeds the Minimum Performance Level) | <b>30%</b> of the monthly value shown in TABLE 4-2--1-1 (Monthly sum for use in calculating VPaaS Prime Service Credits)                                                                                                                                          |
| <b>Service Credit Value for Major KPI Failure</b> (a level of performance that falls below Minimum Performance Level)                                                | <b>100%</b> of the monthly value shown in TABLE 4-2-1-1 (Monthly sum for use in calculating VPaaS Prime Service Credits)                                                                                                                                          |
| <b>No Refresh Availability</b>                                                                                                                                       | This is the Availability target to be delivered against in the event of a breach by the Customer in achieving VPaaS Refresh Deadlines in accordance with Clause 6.10 for an appropriate element of the Prime VPaaS Services. It does not attract Service Credits. |

**ANNEX 4-3****MODERNISATION SERVICES SERVICE LEVELS****1. MODERNISATION SERVICES SERVICE LEVELS**

1.1 The Parties shall agree the following in respect of Modernisation Services in the applicable Supplier Proposal:

(a) agreed Modernisation Services Service Levels; and

(b) obligations with respect to:

- (i) the monitoring of performance against the Modernisation Services Service Levels;
- (ii) the measurement and calculation of the Supplier's performance against the Modernisation Services Service Levels; and
- (iii) the calculation and payment of any Service Credits in respect of any failure to meet the Modernisation Services Service Levels.

1.2 Unless otherwise agreed and expressly stated, Section 2 (General Provisions) of this Schedule 4 (**Service Measurement**) shall apply to Modernisation Services Service Levels and associated Service Credits.



**ANNEX 4-4****APPLICATION SERVICES SERVICE LEVELS****1. APPLICATION SERVICES SERVICE LEVELS**

- 1.1 The Parties shall agree the following in respect of Application Services in the applicable Supplier Proposal:
- (a) agreed Application Services Service Levels; and
  - (b) obligations with respect to:
    - (i) the monitoring of performance against the Application Services Service Levels;
    - (ii) the measurement and calculation of the Supplier's performance against the Application Services Service Levels; and
    - (iii) the calculation and payment of any Service Credits in respect of any failure to meet the Application Services Service Levels.
- 1.2 Unless otherwise agreed and expressly stated, Section 2 (General Provisions) of this Schedule 4 (**Service Measurement**) shall apply to Application Services Service Levels and associated Service Credits unless otherwise expressly stated.

## **SCHEDULE 5**

### **CHARGES**

## SCHEDULE 5

### CHARGES

#### 1. INTRODUCTION

1.1. This Schedule has the following structure:

- (a) an overview of charging;
- (b) a summary of the main components of the Service Charges;
- (c) a detailed description of each component; and
- (d) descriptions of benefits-related charges; indexation; pricing for Changes and New Services; and charging for New Services and discontinuing existing services.

1.2. The Change Control Procedure for variations to the Service Charges is detailed in Schedule 7 (**Change Control Procedure**) and is applicable except when the relevant Service Charges are expressly stated to be not subject to the Change Control Procedure. In such case, the effect on the Service Charges of any agreed or proposed Change shall be agreed between the Parties and the Pricing File shall be updated as necessary.

1.3. Additional charges in respect of providing the Services in Schedule 2 (**Services**) shall not be accepted unless otherwise agreed and implemented via the Change Control Procedure.

1.4. The Rate Based Services (Section 14.5) category of charging shall be used only where other categories of charging are not applicable, and where agreed in advance of usage by the Customer.

1.5. Charges are stated and payable in GBP Sterling (£), and excluding VAT or any other goods and sales tax.

#### 2. OVERVIEW AND COMPONENTS OF THE SERVICE CHARGES

2.1. The Customer shall pay the Supplier the Service Charges for the provision of the Services.

2.2. The amount of the Service Charges shall be determined by totalling amounts from the following components, which are detailed in the following sections of this Schedule:

- (a) **Operational Services Charges:** a charge in respect of new and ongoing Operational Services, which are made up of the following, separate charges:
  - (i) Prime VPaaS Services Charges;
  - (ii) CHIEF VPaaS Services Charges; and
  - (iii) subject to Section 13, Application Services Charges;
- (b) **Service Credits:** a deduction to the Operational Services Charges derived by

applying that part of the costs of Service Credits that are allocated to the Supplier in accordance with Clause 7.5 of the Terms and Conditions;

- (c) **Project Based Charges:** a charge agreed pursuant to Schedule 3 (**Projects and Rate Based Services**) and which includes charges for any Modernisation Services; and
- (d) **Prime Charges Element:** a charge applicable in the event that the Prime Agreement is no longer available to support the Services provided under this Agreement.

2.3. The Service Charges (including the Prime Charges Element) shall cover the full scope of the services needed to provide the Services. Subject to the payment of Pass Through-Expenses in accordance with Clause 8.2 of the Terms and Conditions and any payments in relation to Termination of the Agreement in accordance with Clauses 29.7 or 29.8 of the Terms and Conditions, there shall be no additional charges.

### 3. VPAAS CHARGES PAID UNDER THE PRIME AGREEMENT

3.1. The Parties acknowledge:

- (a) the Prime VPaaS Charges paid by the Customer to the Supplier, pursuant to the Prime Agreement (as amended by CCN FS610); and
- (b) any CHIEF VPaaS Services Charges paid by the Customer to the Supplier, pursuant to the CHIEF Agreement,

from 1 July 2020 and until the Effective Date, have been calculated and paid on the basis of the VPaaS Charges set out herein. Such charges:

- (c) shall count towards and form part of the Operational Services Charges under this Agreement; and
- (d) in particular, and without limitation, shall count towards the Committed Floor Charge and the CHIEF VPaaS Services Charges during GPLI Charge Year 1.

### 4. OPERATIONAL SERVICES CHARGES

4.1. The "**Operational Services Charges**" are comprised of the:

- (a) Prime VPaaS Services Charges, set out in Section 10 below;
- (b) CHIEF VPaaS Services Charges, set out in Section 11 below; and
- (c) Application Services Charges, set out in Section 13 below.

### 5. SERVICE CREDITS

5.1. Service Credits shall be that part of the costs of Service Credits that are allocated to the Supplier in accordance with Clause 7.5 of the Terms and Conditions.

### 6. PROJECT BASED CHARGES

- 6.1. Section 13.1 below describes the principles and mechanisms associated with charging for Projects and Rate Based Services. It has the following structure:
- (a) a description of the Project charging regime; and
  - (b) a description of the Project based charging types.
- 6.2. All Projects shall be managed according to a specific process that conforms to Schedule 3 (**Projects and Rate Based Services**).
- 6.3. The Parties may agree a fixed price for Projects.
- 6.4. Annex 5-1 (**Rate Card**) sets out the rate card which is applicable to the relevant Projects and Rate Based Services, as further described in Section 14.5 below.
- 6.5. For clarity, the Parties acknowledge that this Agreement and the Prime Agreement each has its own process for the procurement of Projects, however any Project Services procured in respect of services required for this Agreement shall be exclusively contracted for under the Project process set out in this Agreement.
- 6.6. Any Modernisation Services Charges shall be paid for as agreed for the applicable Project under which the Modernisation Services are delivered, as set out in Section 12 below.

## **7. PRIME CHARGES ELEMENT**

If the Prime Agreement expires or terminates for any reason prior to the expiry of the Term ("**Prime End**") then from the effective date of the Prime End, the Prime Charges Element shall be paid by the Customer under this Agreement in respect of the Discontinued Prime Services. The Prime Charges Element shall be two million pounds (£2,000,000) excluding VAT per annum, pro-rated to reflect any reduced period of provision of the Discontinued Prime Services.

## **8. CHARGING FOR NEW SERVICES**

- 8.1. All proposals to add a New Service and the associated Charges shall be agreed on a case by case basis and shall be subject to the applicable provisions of Schedule 7 (**Change Control Procedure**).

## **9. INDEXATION**

- 9.1. From the Effective Date, the rates in the Rate Card shall be adjusted to reflect the total increase in the value of the CEL Index over the same period, commencing on 1 July 2020 and being calculated on an annual basis such that each subsequent twelve month period (commencing with the relevant adjustment to the rates from 1 July 2021) shall include a price adjustment to reflect such increase of the CEL Index.
- 9.2. In the event that the CEL Index is discontinued or the basis of its calculation is modified, the Parties shall adopt such alternative index as shall most closely correspond to that index or such index as may be agreed.

## **10. PRIME VPAAS SERVICES CHARGES**

10.1. The Prime VPaaS Charges are made up of:

- (a) the VPaaS GPLI Charges, the volume based charges, subject to the Committed Floor Charge, which are payable in respect of the Prime VPaaS Services;
- (b) the VPaaS Additional Storage Charges, the volume based charges, which are payable in respect of the Prime VPaaS Services; and
- (c) the VPaaS Ancillary Services Charges, the volume based charges which are payable in respect of the provision of the VPaaS Ancillary Services.

10.2. The Customer shall pay to the Supplier the Prime VPaaS Charges monthly in arrears.

10.3. The VPaaS GPLI Charges are set out in Table 1.1 below, and are primarily made up of the Committed Floor Charge and the Excess GPLI Rate.

Table 1.1

The “**GPLI Commitment**” is 5 years

|                                                                                      | <b>GPLI Charge Year 1</b> | <b>GPLI Charge Year 2</b> | <b>GPLI Charge Year 3</b> | <b>GPLI Charge Year 4</b> | <b>GPLI Charge Year 5</b> |
|--------------------------------------------------------------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| <b>Committed Floor (GPLI)</b>                                                        | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Excess GPLI Rate</b>                                                              | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Annual GPLI Floor (before discounts)</b>                                          | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Term Discount</b><br><i>Redacted</i>                                              | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Net after Term Discount</b><br><i>Redacted</i>                                    | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Strategic Discount for Non-Remediation</b><br><i>Redacted</i>                     | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Net after Term Discount and Strategic Discount</b>                                | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Committed Floor (Charge) (with combined Term Discount and Strategic Discount)</b> | £20,826,063               | £20,826,063               | £20,826,063               | £8,558,656                | £6,828,217                |

10.4. The GPLI Committed Floor in GPLI Charge Years 4 and 5 is subject to the adjustment mechanism set out in Section 10.11 below.

- 10.5. The Committed Floor Charge shall be calculated as a monthly amount and payable monthly in arrears.
- 10.6. Actual GPLI usage will be measured on a quarterly basis by the Supplier and reported to the Customer. The first quarter shall be measured from 1 July 2020 to 30 September 2020, and then each subsequent quarter shall be each three (3) calendar month period thereafter during the Term.
- 10.7. In each quarter, if actual GPLI usage exceeds the Committed Floor (GPLI) for that quarter, then the volume difference between the actual GPLI usage and the Committed Floor (GPLI) shall be utilised to calculate the Excess GPLI Charge. The Supplier shall invoice the Customer for such additional, quarterly consumption in the month immediately following such consumption, which shall constitute the **"Excess GPLI Charge"**.
- 10.8. The Excess GPLI Charge shall be calculated on the basis of the Excess GPLI Rate (calculated per day and per the excess GPLI) set out in Table 1.1 above.
- 10.9. If the actual usage of GPLI falls below the volume of the Committed Floor (GPLI) during any quarter, then such underutilisation may not be carried forward by the Customer and set off against the Committed Floor (GPLI) or the Excess GPLI Charge in any future period.
- 10.10. The Parties acknowledge the Strategic Discount set out in Table 1.1. above, and the specific reliance upon the following provisions set out elsewhere in this Agreement which have enabled the Supplier to offer this discount:
- (a) the Customer's undertaking, given in Clause 26.2(c) of the Terms and Conditions, that it shall not breach the Remediation Arrangement under this Agreement; and
  - (b) the Customer's commitment to the VPaaS Refresh Deadlines set out in Clause 6 of the Terms and Conditions and Appendix B (Move to MVE) of Schedule 2 (**Services**) pursuant to which the relevant VME Applications shall be refreshed to the MVE,

(together, the **"Discount Dependencies"**) and that if the Customer breaches or is in default of any one of the Discount Dependencies, then, in addition to any other rights and remedies the Supplier may have under this Agreement or at law, the Strategic Discount shall be removed from the Prime VPaaS Services Charges, from the date on which the relevant breach or default first occurred, and: (i) from such date, the Committed Floor Charge shall be calculated without the application of any discount; and (ii) the value of any discounts applied from the date on which the relevant breach or default first occurred and until the breach or default was determined shall be calculated and become payable by the Customer with the next invoice issued by the Supplier.

#### **Committed Floor (GPLI) for GPLI Charge Years 4 and 5 - Adjustments**

- 10.11. The Customer is entitled to adjust the Committed Floor (GPLI) in GPLI Charge Years 4 and 5 as follows:
- (a) the Customer shall provide its final and confirmed notice to the Supplier no

less than six (6) months prior to the commencement of the relevant GPLI Charge Year of its required Committed Floor (GPLI) for either GPLI Charge Year 4 or 5; and

- (b) the new Committed Floor (GPLI) specified by the Customer:
  - (i) may be higher than the Committed Floor (GPLI) specified in Table 1.1 above, in which case the VPaaS GPLI Charges for the relevant year shall be re-calculated to reflect the higher commitment, including the re-calculation of the applicable Committed Floor Charge; or
  - (ii) may be lower than the Committed Floor (GPLI) specified in Table 1.1 above, subject to such reduction: (1) being no greater than a removal of up to 1,500 GPLI in GPLI Charge Year 4 and up to 1,000 GPLI in GPLI Charge Year 5; and (2) being subject to an absolute, minimum Committed Floor (GPLI) in each year of 1,000 GPLI. In such instance, the VPaaS GPLI Charges for the relevant year shall be re-calculated to reflect the higher commitment, including the re-calculation of the applicable Committed Floor Charge; and
  - (iii) in any event, the Excess GPLI Rate shall not be adjusted as a result of the Customer changing the Committed Floor (GPLI).

### Future Charges

10.12. The Parties acknowledge that the VPaaS GPLI Charges set out in Section 10.3 above have been calculated on the basis of the GPLI Commitment, and are only applicable during the period of the GPLI Commitment, which shall expire on 30 June 2025 (the "**GPLI Commitment Expiry Date**").

10.13. The Supplier's position on its charges after the GPLI Commitment Expiry Date is that the VPaaS GPLI Charges and the CHIEF VPaaS Services Charges set out in this Agreement shall no longer be available to the Customer either under this Agreement or more generally in the market for similar services.

### VPaaS Additional Storage Charges

10.14. VPaaS Additional Storage Charges shall be chargeable to the extent that there is an increase in the Customer's VPaaS storage requirements in excess of the available storage capacity as set out in Table 1.2, as applicable (the "**VPaaS Storage Baseline**"):

Table 1.2

|                                          | <b>GPLI<br/>Charge Year<br/>1</b> | <b>GPLI<br/>Charge<br/>Year 2</b> | <b>GPLI<br/>Charge<br/>Year 3</b> | <b>GPLI<br/>Charge<br/>Year 4</b> | <b>GPLI<br/>Charge<br/>Year 5</b> |
|------------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| <b>VPaaS Filestore GB</b>                | 10,773                            | 10,773                            | 10,773                            | 10,773                            | 10,773                            |
| <b>VPaaS Virtual Tape<br/>Storage GB</b> | 19,043                            | 19,043                            | 19,043                            | 19,043                            | 19,043                            |



- 10.15. If the Customer requires an increase to the VPaaS Storage Baseline ("**Additional Storage**"), it shall request the Additional Storage in accordance with the Change Control Procedure. Any such request shall, subject to agreement to pay for the Change, result in the agreed Additional Storage.
- 10.16. The Additional Storage can be purchased for a period of no less than twelve (12) months.
- 10.17. *Redacted*
- 10.18. If the Customer requires Additional Storage during the final twelve (12) months of the Term, such that the minimum period of purchase of the Additional Storage would be less than twelve (12) months, then:
- (a) the unit price calculation for the VPaaS Additional Storage Charges shall continue to be on the basis of the charges set out in Section **Error! Reference source not found.** above; and
  - (b) on the expiry of the Term, there shall be a true up of the amounts paid by the Customer to reflect a purchase equivalent to twelve (12) months in respect of the Additional Storage. For example, if only six (6) months can be purchased, then on expiry the Customer shall as part of the true-up pay an additional six (6) months to the Supplier.
- 10.19. The Customer is entitled to reduce the VPaaS Storage Baseline set out in Table 1.2 in GPLI Charge Years 4 and 5, by providing no less than three (3) months' notice on no more than three occasions, commencing on the date three (3) months prior to the expiry of GPLI Charge Year 3, that it requires a reduction in the VPaaS Storage Baseline, and specifying its required reduction.

#### **VPaaS Ancillary Services Charges**

- 10.20. The VPaaS Ancillary Services are provided to the Customer:
- (a) on the basis of usage by fifteen thousand (15,000) concurrent Customer end users (the "**VPaaS Ancillary Services Baseline**"); and
  - (b) to the extent not exceeding the VPaaS Ancillary Services Baseline, as part of the VPaaS GPLI Charges.
- 10.21. If the Customer requests and the Supplier implements:
- (a) an increase to the VPaaS Ancillary Services Baseline; or
  - (b) a new application programming interface as part of the VPaaS Ancillary Services,

then the Parties shall agree such Changes, including the relevant VPaaS Ancillary Services Charges, pursuant to the Change Control Procedure.

#### **Prime VPaaS Charging Assumptions**

- 10.22. The Parties acknowledge that the Prime VPaaS Charges, and the Supplier's responsibility for providing the Prime VPaaS Services in accordance with this

Agreement, are subject to the Prime VPaaS Charging Assumption being, and remaining throughout the Term, accurate.

- 10.23. In the event that the Prime VPaaS Charging Assumption proves to be inaccurate or not well founded, the Prime VPaaS Services, Service Levels and/or Prime VPaaS Services Charges shall be altered at the Supplier's request via the Change Control Procedure.
- 10.24. The "**Prime VPaaS Charging Assumption**" underpinning the Prime VPaaS Charges is that there is no Customer Third Party Software in use with the Prime VPaaS Services other than as expressly envisaged by this Agreement.

#### **No Application of Change Control Procedure**

- 10.25. The Prime VPaaS Charges shall not be subject to the Change Control Procedure, save where the Parties agree a Change is a chargeable Change pursuant to the Change Control Procedure.

### **11. CHIEF VPAAS SERVICES CHARGES**

- 11.1. The CHIEF VPaaS Services Charges are set out in Table 1.3 below:

Table 1.3

|                                                | <b>GPLI Charge Year 1</b> | <b>GPLI Charge Year 2</b> | <b>GPLI Charge Year 3</b> | <b>GPLI Charge Year 4</b> | <b>GPLI Charge Year 5</b> |
|------------------------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| <b>Declarations Assumption, per annum</b>      | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |
| <b>Chief VPaaS Services Charges, per annum</b> | £16,956,355               | £16,956,355               | £16,956,355               | £16,956,355               | £16,956,355               |
| <b>CHIEF Excess per GPLI Charge</b>            | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           | <i>Redacted</i>           |

- 11.2. The CHIEF VPaaS Services Charges shall be pro-rated to a monthly amount of one million four hundred and thirteen thousand and thirty pounds (£1,413,030) and payable monthly in arrears.
- 11.3. At the end of each GPLI Charge Year, actual CHIEF GPLI usage for that GPLI Charge Year (the "**Actual CHIEF GPLI**") shall be calculated and reported by the Supplier to the Customer for the GPLI Charge Year.
- 11.4. If in respect of any GPLI Charge Year, the number of Declarations processed exceeds the Declarations Assumption for that GPLI Charge Year, then the CHIEF Excess GPLI Charge shall be calculated by reference to the Actual CHIEF GPLI which exceeded the number of GPLI required to process the Declarations Assumption for that year and this

shall be the total CHIEF Excess GPLI Charge for such GPLI Charge Year. Subject to Section 11.5 below, the Supplier shall invoice the Customer for such additional CHIEF GPLI over and above the CHIEF GPLI used to achieve **REDACTED** Declarations in GPLI Charge Year 1 and **REDACTED** Declarations in subsequent GPLI Charge Years in the month immediately following such calculation, which shall constitute the "**CHIEF Excess GPLI Charge**".

- 11.5. If the usage of CHIEF GPLI falls below the Declarations Assumption during any GPLI Charge Year, then such underutilisation shall be carried forward to the next GPLI Charge Year, and shall reduce the value of the Customer's Actual CHIEF GPLI usage for that GPLI Charge Year. At the expiry or termination of this Agreement, any unused (including any carried forward) GPLIs shall not result in any credit or payment to the Customer.
- 11.6. The Declarations Assumptions set out in Table 1.3 above, do not constitute a commitment by the Supplier that the CHIEF Technical Infrastructure and the CHIEF VPaaS Services will be able to achieve the Declarations Assumption as the Parties agree that the achievement of such numbers is dependent on how the Customer operates the CHIEF Application, its processes and its Declaration business. It is simply shown to reflect a capped GPLI based price so that the Customer will not pay CHIEF Excess GPLI Charges until this level of consumption is reached.

#### **CHIEF VPaaS Services Charge Assumption**

- 11.7. The Customer undertakes to the Supplier that there is no Customer Third Party Software running on the CHIEF VPaaS Services other than as expressly envisaged by this Agreement (the "**CHIEF VPaaS Charging Assumption**").
- 11.8. The Parties acknowledge that in respect of the CHIEF VPaaS Charging Assumption:
  - (a) the CHIEF Agreement, and the Supplier's responsibility for providing the CHIEF VPaaS Services in accordance with this Agreement, are subject to the CHIEF VPaaS Charging Assumption being, and remaining throughout the Term, accurate; and
  - (b) if it proves to be inaccurate or not well founded, the CHIEF VPaaS Services, applicable Service Levels and/or CHIEF VPaaS Services Charges shall be altered at the Supplier's request via the Change Control Procedure.

#### **No Application of Change Control Procedure**

- 11.9. The Charges for CHIEF Excess GPLI shall not be subject to the Change Control Procedure and shall simply be payable on a P x Q basis.

#### **CHIEF Additional Storage Charges**

- 11.10. CHIEF Additional Storage Charges shall be chargeable to the extent that there is an increase in the Customer's CHIEF storage requirements in excess of the storage capacity required in order to store records on the basis that such records are stored as at the Effective Date for up to **REDACTED** Declarations per annum (the "**CHIEF Storage Baseline**").
- 11.11. If the Customer requires an increase to the CHIEF Storage Baseline ("**CHIEF**

**Additional Storage**”), it shall request the CHIEF Additional Storage in accordance with the Change Control Procedure. Any such request shall, subject to agreement to pay for the Change, result in the agreed CHIEF Additional Storage.

## **12. MODERNISATION SERVICES CHARGES**

- 12.1. The Parties acknowledge that the Modernisation Services will be entered into as a Project pursuant to Schedule 3 (**Projects and Rate Based Services**) and the charges for Modernisation Services shall be the Project Based Charges as agreed for that Project. Unless otherwise agreed in writing between the Parties the Project Based Charges payable in respect of any work agreed in respect of Modernisation Services shall be as agreed in writing when contracting such specific services and they shall in default of such express agreement be on the basis of the Supplier’s Rate Card.

## **13. APPLICATION SERVICES CHARGES**

- 13.1. The Parties acknowledge that any Application Services requested by the Customer will be called-off pursuant to the Change Control Procedure. The Parties anticipate that the Application Services will be chargeable as Operational Services Charges; however, if the relevant Operational Services Charges are not specified then they shall in default of such express agreement be charged on the basis of the Supplier’s Rate Card.

## **14. PROJECTS AND RATE BASED CHARGES**

- 14.1. The Projects Based Charges and Rate Based Charges shall apply in respect of any Project entered into pursuant to Schedule 3 (**Projects and Rate Based Services**) and shall, unless agreed in writing by the Parties, be based on the Supplier’s Rate Card and shall include without limitation the following types of services and Projects:
- (a) the VPaaS Termination Assistance, provided in accordance with Clause 29.7(b) of the Terms and Conditions;
  - (b) the Prime VPaaS Application Consultancy Services, in accordance with Section 14.2 below;
  - (c) the CHIEF Decommissioning Services; and
  - (d) any other Project Services or Rate Based Services.
- 14.2. The rates in the Rate Card shall apply to the Prime VPaaS Consultancy Services, and to the extent there is a “Specialist” variant of a particular role within the Rate Card, then such specialist rate shall be the one applicable for the Prime VPaaS Consultancy Services.
- 14.3. The Projects Based Charges and Rate Based Charges shall include provision of all the Man-days required to contribute directly to the Project Services or Rate Based Services (as applicable), including the Supplier’s project management and co-ordination time. Non-productive time and administrative support to Projects and Rate Based Services (including secretarial support, photocopying and similar activities) is not included in the Projects Based Charges and Rate Based Charges as the case may be. Accordingly, the Man-day rates quoted in the Rate Card cover the costs of such indirect activities.

14.4. The following table summarises the Project Based Charges and sets out the unit basis of each charge:

| <b>Project Based Charges</b>  |                                                                                                                            |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| <b>Service</b>                | <b>Basis of Charge</b>                                                                                                     |
| Rate Based Services (General) | Per Man-day for specific category of staff based on the Rate Card.                                                         |
| Fixed Price (General)         | On a fixed price basis for the Project as detailed in the Final Supplier Proposal or Change Request agreed by the Parties. |

#### 14.5. **Rate Based Services**

- (a) This Section 14.5 summarises the principles of charging for Rate Based Services. The Customer may commission Rate Based Services for Projects or for other reasons.
- (b) Rate Based Services (General) shall only be used for tasks not covered by a specified Charge under this Agreement.
- (c) The Customer shall use Commercially Reasonable Efforts to schedule Projects that requires the support of live services engineers during Normal Working Hours.
- (d) **Charging for Rate Based Services (General)**
  - (i) The Supplier shall make a charge based on the appropriate Man-day rate set out in the Rate Card.
  - (ii) The following services (if applicable) will be charged through Rate Based Services (General):
    - A. IT Strategy;
    - B. Strategic Technical Architecture;
    - C. Business Requirements Analysis and Writing;
    - D. IT Feasibility;
    - E. Business Change;
    - F. Audit Assistance;
    - G. Any roles as may be agreed from time to time by the Parties; and
    - H. Agile discovery inception, discovery planning, Discovery Phase and Alpha Phase.

- (iii) The following are a set of indicative competencies to demonstrate the types of skills required for some of the roles listed above. It is not intended as a definitive or exhaustive list, nor is it intended that every resource undertaking these roles would either need or have all these skills as this will depend on the specific business requirement:
- A. Change Manager/Transformation Consultants requires High Quality Project & Programme Management Skills; Client Relationship Management Skills; Proficiency in delivery and large scale transformation programmes; and proficiency in the appropriate tools, techniques and processes necessary to enable the effective and efficient execution of business or IT transformation programmes and projects. The role involves shaping and leading the implementation of changes to the Customer's business, processes, organisation and technology;
  - B. Transformation Leaders require proven Business Engineering/Re-engineering skills; Executive Client Relationship Management Skills (including opinion forming at senior levels); proficiency in holistic diagnostic, design and delivery and large scale transformation programmes; and proficiency in the appropriate tools and techniques to enable the effective and efficient execution of transformation programmes. The role involves shaping and leading the implementation of changes to the Customer's business, processes, organisation and technology;
  - C. Transformation Leaders are where the role is being fulfilled by a Supplier Vice President or an equivalent partner-level resource from the Supplier;
  - D. Strategic Security Architects require strong IT Architecture skills; application of market-leading knowledge of Security issues, legislation and industry trends; ability to work effectively in an exceptionally complex and constantly changing discipline; strong stakeholder management; and extensive experience within security delivery and leading teams of security architects within projects and programmes. Holds relevant security qualifications, such as CLAS (CESG Listed Advisor Scheme), CISSP (Certified Information Security Systems Professional), ITPC (Information Technology Practitioners Certificate) or CISM (Certified Information Security Manager) and has extensive knowledge of HMG Security and the requirements for enterprise system accreditation. The role sets the Security Strategy for Portfolios, Strategic Programmes and Projects within the overarching Customer Security Strategy; and develops the Security Architect deliverables for strategic Projects;
  - E. Security Architects require strong IT Architecture skills; application of market-leading knowledge of Security issues, legislation and industry trends; ability to work effectively in an exceptionally complex and constantly changing discipline; relevant security qualifications, such as CLAS (CESG Listed

Advisor Scheme), CISSP (Certified Information Security Systems Professional), ITPC (Information Technology Practitioners Certificate) or CISM (Certified Information Security Manager) and has good knowledge of HMG Security and the requirements for enterprise system accreditation. They typically work within a single project or support a larger project or programme of work, working for or with a Strategic/Senior Security Architect. Security Architect works with Projects and Programmes to ensure that IT Solutions meet the Customer's Security Strategy and the consequent exacting standards for security; and

- F. Penetration Testing assesses the degree to which developed IT Solutions are vulnerable to Security threats. The testing involves both application and infrastructure testing to reveal vulnerabilities. Requires deep knowledge and experience of the tools and techniques to ensure that the latest threats and attack types are represented in the testing.
- (iv) General Rate Based Services Man-day charges include all travel and subsistence expenses of Supplier Personnel performing work at any Supplier, Subcontractor or Customer offices located in Great Britain (whether existing or new) (note it is the responsibility of the Supplier to determine the optimal site or sites from which to deliver each Project or service.).
  - (v) If the Customer requests that Project Services or Rate Based Services be delivered from a specific site or sites then the Parties shall discuss and shall aim to agree prior to work commencing whether expenses shall be chargeable for that Project or Rated Based Service. Agreement in writing from an appropriately authorised officer of the Customer shall be sufficient to allow the Supplier to charge for expenses.
  - (vi) If agreement has not been reached prior to issue of the relevant Supplier Proposal or Change Request, the Parties shall include in that Supplier Proposal or Change Request an option for delivery location for which no expenses shall be chargeable. If the Customer then approves the Supplier Proposal or Change Request but does not confirm that expenses are chargeable, the Supplier shall commence work at the location of their choosing and expenses shall not be chargeable.
  - (vii) General Rate Based Services will be charged based on the number of hours worked and the Man-day charge for each role is based on a seven and a half (7.5) hour day. So for example, 10 hours worked during one day is equal to one-and-a-third Man-days of billable time
  - (viii) There is no distinction between work done on a weekday as opposed to weekend or bank holiday work and no overtime rates apply.
  - (ix) General Rate Based Services is charged on a time & materials basis (unless otherwise agreed by the Parties). Agreement by the Customer of a Supplier Proposal or Change Request does not create an obligation on the Supplier to complete the General Rate Based Services (activities and/or deliverables) described in that Supplier Proposal or Change

Request for the General price set out in that Supplier Proposal (unless otherwise agreed by the Parties).

- (e) All time incurred by Supplier resources performing General Rate Based Services shall be chargeable at the applicable Man-day rates set out in the Rate Card unless:
  - (i) otherwise agreed in writing by the Parties; or
  - (ii) such work constitutes non-chargeable work as set out below, as such effort is recovered through the Operational Services Charges:
    - A. Any project effort which the Parties agree was previously included within the Operational Services.
    - B. Support for any new systems and services provided under the Agreement as detailed within the service scope of the catalogue (where such a catalogue exists).
    - C. Engineering effort for commissioning and decommissioning of services at the component level e.g. decommissioning a payload or server.
    - D. Activities in support of the Supplier maintaining and extending its catalogue offerings, including effort for architect (CSA) design; project management; low level design work; testing within the confines of the Supplier's work-share; on-going patching; strategy and policy; Configuration and testing by support teams e.g. "WIS/UIS".
    - E. Server interrogation (discovery) to the extent permitted by the Customer's firewall rules and the Supplier's existing automated/standard EM toolset.
- (f) Examples of chargeable effort may include:
  - (i) New business projects and without prejudice to Schedule 7 (**Change Control Procedure**) Change Requests commissioned by the Customer.
  - (ii) Architect (CSA) effort / Project Management effort.
  - (iii) Low level design work (Infrastructure Design).
  - (iv) Integration and testing e.g. "PVT" testing.
  - (v) Any effort required outside of the scope of the agreed catalogue parameters.
  - (vi) 3rd party application development, testing and management costs.
- (g) **Fixed Price Projects**
  - (i) The Parties may agree that a Project shall be provided on a fixed price



basis. The fixed price shall be detailed in the Supplier Proposal or Change Request agreed by the Parties.

- (ii) Fixed Price (General) Projects shall be charged using the Rate Card in accordance with the payment profile detailed in the Supplier Proposal or Change Request agreed by the Parties.

## **15. PRICING FILE**

15.1. The Pricing File as at the Effective Date it is attached at Annex 5-3.

15.2. The Supplier shall maintain and update the Pricing File (and provide an updated version at a frequency to be agreed with the Customer where there have been changes to the Pricing File) during the Term in order to represent accurately the cost and consequential Service Charges variation resulting from Changes to the Agreement and the Supplier's ongoing costs of providing the Services.

### **15.3. Changes to Pricing File**

- (a) Following a Change to the Agreement, made from time to time in accordance with the Change Control Procedure, the Pricing File shall be varied (where appropriate) in accordance with the procedures set out in this Section 15.3, although not all Changes will necessarily result in a variation to the Pricing File.
- (b) In the event of a Change that gives rise to the requirement to vary the Pricing File, the revised costs, as approved by the Customer, shall be inserted into the Pricing File.
- (c) Once the variation to the Pricing File has been completed, the Supplier shall provide the Customer with a copy of the revised Pricing File.

**ANNEX 5-1****RATE CARD**

| <b>Role</b>                                                                                                                                                                       | <b>Day Rate</b>        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Partner Level Resource                                                                                                                                                            | <b><i>Redacted</i></b> |
| Transformation Leader                                                                                                                                                             | <b><i>Redacted</i></b> |
| Change Manager                                                                                                                                                                    | <b><i>Redacted</i></b> |
| Transformation Consultant                                                                                                                                                         | <b><i>Redacted</i></b> |
| Programme Director                                                                                                                                                                | <b><i>Redacted</i></b> |
| Special Requirement (e.g., NIRS Feasibility)                                                                                                                                      | <b><i>Redacted</i></b> |
| Strategy Architect (including Strategic Security Architect)                                                                                                                       | <b><i>Redacted</i></b> |
| Senior Consultant                                                                                                                                                                 | <b><i>Redacted</i></b> |
| Enterprise Architect                                                                                                                                                              | <b><i>Redacted</i></b> |
| Security Architect                                                                                                                                                                | <b><i>Redacted</i></b> |
| Consultant                                                                                                                                                                        | <b><i>Redacted</i></b> |
| Strategic Programme Manager                                                                                                                                                       | <b><i>Redacted</i></b> |
| VME Principle Performance Test Lead                                                                                                                                               | <b><i>Redacted</i></b> |
| VME Service Manager Lead                                                                                                                                                          | <b><i>Redacted</i></b> |
| Senior Project Manager                                                                                                                                                            | <b><i>Redacted</i></b> |
| Principal VME Design Architect 3 (Core MVE architecture design consultancy) (to be utilised in accordance with the rules agreed by the parties in the context of VPaaS readiness) | <b><i>Redacted</i></b> |
| VME Performance Test Lead                                                                                                                                                         | <b><i>Redacted</i></b> |
| Test Director                                                                                                                                                                     | <b><i>Redacted</i></b> |
| Penetration Testing                                                                                                                                                               | <b><i>Redacted</i></b> |
| Principal VME Design Architect 2 (Performance consultancy) (to be utilised in accordance with the rules agreed by the parties in the context of VPaaS readiness)                  | <b><i>Redacted</i></b> |
| VME Test Manager Performance                                                                                                                                                      | <b><i>Redacted</i></b> |
| VME Developer Lead                                                                                                                                                                | <b><i>Redacted</i></b> |
| Senior DBA                                                                                                                                                                        | <b><i>Redacted</i></b> |
| Project Finance Analyst                                                                                                                                                           | <b><i>Redacted</i></b> |
| Senior Business Analyst                                                                                                                                                           | <b><i>Redacted</i></b> |
| Delivery Manager                                                                                                                                                                  | <b><i>Redacted</i></b> |
| Project Manager                                                                                                                                                                   | <b><i>Redacted</i></b> |
| Implementation Manager                                                                                                                                                            | <b><i>Redacted</i></b> |
| Test Manager                                                                                                                                                                      | <b><i>Redacted</i></b> |
| Principal VME Design Architect 1 (Databases and I/O consultancy) (to be utilised in accordance with the rules agreed by the parties in the context of VPaaS readiness)            | <b><i>Redacted</i></b> |
| VME Service Manager Senior                                                                                                                                                        | <b><i>Redacted</i></b> |
| VME Developer Senior                                                                                                                                                              | <b><i>Redacted</i></b> |
| VME Technical Service Provider Lead                                                                                                                                               | <b><i>Redacted</i></b> |
| CHIEF PVT Senior Consultant                                                                                                                                                       | <b><i>Redacted</i></b> |

| Role                                                        | Day Rate        |
|-------------------------------------------------------------|-----------------|
| CHIEF PVT Architect                                         | <i>Redacted</i> |
| Configuration Manager                                       | <i>Redacted</i> |
| Senior/Lead Analyst                                         | <i>Redacted</i> |
| Engineer                                                    | <i>Redacted</i> |
| DBA                                                         | <i>Redacted</i> |
| Business Analyst                                            | <i>Redacted</i> |
| Infrastructure Architect for Low Level Design               | <i>Redacted</i> |
| VME Developer                                               | <i>Redacted</i> |
| Senior Quality Analyst                                      | <i>Redacted</i> |
| Senior IT Trainer                                           | <i>Redacted</i> |
| Specialist Analyst                                          | <i>Redacted</i> |
| Team Leader/Specialist Live support Engineer                | <i>Redacted</i> |
| Project Planner/Project Support Analyst                     | <i>Redacted</i> |
| Analyst                                                     | <i>Redacted</i> |
| Live Support Engineer                                       | <i>Redacted</i> |
| Quality Analyst                                             | <i>Redacted</i> |
| IT Trainer                                                  | <i>Redacted</i> |
| Test Engineer                                               | <i>Redacted</i> |
| VME Service Manager                                         | <i>Redacted</i> |
| VME Technical Service Provider Senior                       | <i>Redacted</i> |
| VME Technical Service Provider Junior                       | <i>Redacted</i> |
| Business Product delivery                                   | <i>Redacted</i> |
| Tester                                                      | <i>Redacted</i> |
| Operations Analyst                                          | <i>Redacted</i> |
| Partner Level Resource                                      | <i>Redacted</i> |
| Transformation Leader                                       | <i>Redacted</i> |
| Change Manager                                              | <i>Redacted</i> |
| Transformation Consultant                                   | <i>Redacted</i> |
| Programme Director                                          | <i>Redacted</i> |
| Special Requirement (e.g., NIRS Feasibility)                | <i>Redacted</i> |
| Strategy Architect (including Strategic Security Architect) | <i>Redacted</i> |
| Senior Consultant                                           | <i>Redacted</i> |
| Enterprise Architect                                        | <i>Redacted</i> |
| Security Architect                                          | <i>Redacted</i> |

## ANNEX 5-2

### TERMINATION CHARGES

1. Where the Customer is liable to pay Termination Charges in accordance with Clause 29.8 of the Terms and Conditions, such Termination Charges shall be calculated based on the tables below, dependent on whether or not, at the time that Termination takes effect, the Strategic Discount is being applied in accordance with Section 10.10 of Schedule 5 (**Charges**). For clarity, the Term Discount shall remain applicable even where the Customer terminates prior to the end of the agreed Term, provided that the Customer pays the Termination Charges in accordance with this Agreement.
2. The Customer shall pay the specified Termination Charges shown for the Quarter in which the Termination (which gives rise to the payment of Termination Charges) takes effect plus the applicable Charges payable by the Customer for that Quarter (including all other Charges which are due but not which have not been paid and which will would be payable for the remainder of the applicable Quarter but for the Termination).
3. If the Customer has complied with its obligations in respect of the Remediation Arrangement prior to the termination of this Agreement, then the Termination Charges shall be calculated in accordance with Table 1:

**Table 1 - Termination Charges where the Term Discount and Strategic Discount are applied at the effective date of Termination:**

|               | Quarter 1       | Quarter 2       | Quarter 3       | Quarter 4       |
|---------------|-----------------|-----------------|-----------------|-----------------|
| <b>YEAR 1</b> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
| <b>YEAR 2</b> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
| <b>YEAR 3</b> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
| <b>YEAR 4</b> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
| <b>YEAR 5</b> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |

The figures payable in accordance with Table 1 are calculated by aggregating the Prime VPaaS Charges (with the Term Discount and Strategic Discount) and CHIEF VPaaS Charges that would have been payable for all remaining Quarters after the applicable Quarter (in which Termination was effective) to represent the minimum value that the Supplier would have been paid during the remainder of the Term but for the Termination.

4. If the Customer has not complied with its obligations in respect of the Remediation Arrangement at any time prior to the termination of this Agreement, then the Termination Charges shall be calculated in accordance with Table 2:

**Table 2 - Termination Charges where the Term Discount is applied but the Strategic Discount is not applied at the effective date of Termination:**

|               | Quarter 1       | Quarter 2       | Quarter 3       | Quarter 4       |
|---------------|-----------------|-----------------|-----------------|-----------------|
| <b>YEAR 1</b> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |

|               |                        |                        |                        |                        |
|---------------|------------------------|------------------------|------------------------|------------------------|
| <b>YEAR 2</b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> |
| <b>YEAR 3</b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> |
| <b>YEAR 4</b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> |
| <b>YEAR 5</b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> | <b><i>Redacted</i></b> |

The figures in accordance with Table 2 are calculated by aggregating the Prime VPaaS Charges (with the Term Discount but without the Strategic Discount) and CHIEF VPaaS Charges that would have been payable for all remaining Quarters after the applicable Quarter (in which Termination was effective) to represent the minimum value that the Supplier would have been paid during the remainder of the Term but for the Termination.

**ANNEX 5-3**  
**PRICING FILE**

*Redacted*

**SCHEDULE 6**

**INVOICING**

## SCHEDULE 6

### INVOICING

#### 1 INVOICING

##### 1.1 Electronic Invoicing

- (a) The Customer shall accept for processing any electronic invoice that complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870 (the “**European Standard**”), provided that it is valid and undisputed.
- (b) If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard, the Supplier shall comply with the requirements of the Customer’s e-invoicing system. In the alternative, the Supplier shall:
  - (i) prepare and provide to the Customer for approval of the format a template invoice within ten (10) Working Days of the Effective Date which shall include such information as the Customer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
  - (ii) make such amendments as may be reasonably required by the Customer if the template invoice outlined in Section 1.2(b)(i) is not approved by the Customer.

##### 1.2 Submission of Invoices

###### (a) Invoice Frequency

The Supplier shall submit monthly invoices in arrears via the Customer’s MyBuy System by midday on the second (2nd) Working Day of the following month. In respect of invoices for Operational Services, the Supplier shall not be obliged to submit more than ten (10) such invoices per month, unless otherwise agreed by the Parties.

###### (b) Invoice Structure/Information

- (i) Each invoice shall be prepared in accordance with Schedule 5 (**Charges**) and shall (where appropriate) contain a line item for each of the following:
  - (A) financial remedies including Service Credits and Liquidated Damages;
  - (B) adjustments from previous invoices to reflect overpayments or underpayments;
  - (C) any other amount due and payable under the Agreement;
  - (D) any interest payable in respect of any amounts owed;
  - (E) any amount to be credited to the Customer;



- (F) subtotal (total of items 1.2(b)(i)(A) through (E) (exclusive of VAT);
    - (G) VAT (at the appropriate rate); and
    - (H) total (inclusive of VAT).
  - (ii) The Customer will specify the precise invoice format to be adopted.
  - (iii) The Supplier shall provide a supporting schedule for each of the charging elements recorded on the invoice to the Customer. The schedules will detail each individual charge and will also provide a summary of those charges and the volumes on which they are based (calculated in accordance with Annex 6-1), where appropriate.
  - (iv) The Supplier shall align each invoice and backing data with the applicable corresponding purchase order. The Customer may, by written notice to the Supplier, update its requirements for the aligning of invoices and backing data to purchase orders and the Supplier shall, subject to Section 1.2(b)(v), implement such updated requirements at no additional cost to the Customer within one (1) month of the date of the Customer's notice (unless otherwise agreed by the Parties).
  - (v) Where there are significant changes to the Customer's requirements in respect of invoicing, for example changes to the alignment of invoices and backing data with purchase orders (including where the change requires a change to the Supplier's processes or systems), the Parties will agree such changes via the Change Control Procedure.
- (c) **Invoicing Address**
- The Supplier shall submit all invoices to the Customer at such addresses as may be notified by the Customer to the Supplier from time to time.
- (d) **Purchase Orders**
- (i) The Customer shall raise separate purchase orders for Operational Services and Project Services.
  - (ii) The Parties agree that all invoices will reference "Approved Purchase Order" numbers.

### 1.3 Invoice Payment

(a) **Payment Terms**

The Customer shall make payment to the Supplier within fifteen (15) days of receipt by the Customer of a valid invoice. The Parties may agree to accelerate such payment terms (either for individual invoices or for particular groups of invoices). Any invoice in respect of which there is such an agreed acceleration shall include a discount equal to the amount of interest on the sum payable under such invoice at a rate equal to HM Treasury's "National Loan Fund Rate" plus two per cent (2%) per annum (such amount of interest being calculated

on a daily basis for the number of days by which payment is agreed to be accelerated).

(b) **Invoice Validity**

An invoice shall only be considered valid if it is submitted in accordance with the requirements set out in Section 1.1 and 1.2 above.

(c) **Work Authorisation**

The Supplier shall not be entitled to payment for any work on any Project which has not been properly authorised via the Customer's MyBuy System, with the exception of charges for work undertaken by the Supplier following authorisation of an Interim Approval Certificate in accordance with Section 4 of Schedule 3 (**Projects and Rate Based Services**).

## 1.4 Credits

(a) **Scope**

(i) Monies (an overpayment or an offset) may become due to the Customer under this Agreement in a number of circumstances, including, for example:

- (A) following invoice verification as described in Section 1.5 below;
- (B) as the result of an audit as described in Section 2 below;
- (C) as a result of the application of the Service Credit arrangements set out in Schedule 4 (**Service Measurement**); and
- (D) liability for Liquidated Damages.

(ii) The Supplier shall pay all such monies to the Customer by means of credits granted to the Customer and such credits shall be indicated on the appropriate invoice submitted in accordance with this Schedule.

(b) **Payment**

The Supplier shall apply any credits due under Section 1.4(a) above as a deduction on the appropriate invoice for the month immediately following the agreement of the calculation of the monies due in accordance with the relevant mechanism or process. If such invoice is insufficient to off-set the credits payable, a credit note will be sent to the Customer for the balance.

## 1.5 Invoice Verification

(a) **Process**

(i) The Customer shall, without waiving its rights to recover any overpayment, either:

- (A) make payment after an initial verification of each invoice in full, prior to a detailed verification; or

- (B) in respect of an invoice which is partially in dispute, the Supplier shall issue a credit note for the amount in dispute and the Customer will make the payment to the Supplier for that part of the invoice which is not disputed.
  - (ii) The Supplier shall provide such assistance and supplementary information as the Customer may reasonably require in order to verify the accuracy of each invoice.
- (b) **Settlement**
- (i) For the avoidance of doubt, a failure by the Customer to notify the Supplier of any dispute concerning the Service Charges shown on any invoice shall not constitute a waiver of the Customer's rights in relation to any amount subsequently found to be incorrect.
  - (ii) Where an overpayment has arisen, the Supplier shall grant the Customer a credit in the amount of the overpayment in accordance with Section 1.4 above.
  - (iii) Where an undercharge has been made, the Supplier shall add the amount to the next invoice.
  - (iv) Where the Parties cannot agree that an overpayment or underpayment has been made or cannot agree the amount of the overpayment or underpayment, both Parties shall work together to resolve the issue in accordance with the Escalation Process. If, following such Escalation Process, an overpayment or underpayment is found to have occurred, any settlement of such overpayment or underpayment shall be effected in accordance with Section 1.5(b)(ii) or 1.5(b)(iii) respectively.

## 2 **AUDIT VERIFICATION**

If any audit reveals any error or incorrect charging in any invoice, an appropriate correcting payment or credit shall be promptly made by the Supplier to the Customer together with (in the case of net over-charging) interest at two percent (2%) above the Bank of England's base lending rate from the date the incorrect payment was made to the date of the repayment by the Supplier.

**ANNEX 6-1****CALCULATION OF VOLUMES FOR INVOICING (SECTION 1.2(B)(III))****1 PRIME VPAAS SERVICES**

The Parties shall report and agree the variable elements of Prime VPaaS Services Charges, including GPLI against forecast, storage and any other variable elements.

**2 CHIEF VPAAS SERVICES**

The Parties shall report and agree any variable elements of CHIEF VPaaS Services Charges, including Excess GPLI, excess storage and any other variable elements.

**3 APPLICATION SERVICES AND MODERNISATION SERVICES**

Calculation of volumes shall be undertaken in accordance with process agreed in the applicable Supplier Proposal.

**SCHEDULE 7**  
**CHANGE CONTROL PROCEDURE**

## **SCHEDULE 7**

### **CHANGE CONTROL PROCEDURE**

#### **1 INTRODUCTION**

- 1.1 The Parties agree that the process for changing, reducing or adding to the Services or implementing other changes or proposed changes to this Agreement for which there is no other procedure expressly provided in this Agreement ("**Changes**") will be through the procedures set out in this Schedule.
- 1.2 This Schedule sets out the procedure that will apply to the classification, processing, approval or rejection of Changes.
- 1.3 It is the intention of the Parties that the procedure for classification and processing of Changes does not automatically give rise to a change in the Service Charges.
- 1.4 Save as otherwise expressly agreed, nothing contained in this Schedule shall limit the rights of the Customer to receive a reduction in the Service Charges as a result of any Change nor limit the rights of the Supplier (as set out in Section 4.2(a) below) to receive an increase in the Service Charges as a result of any Change.
- 1.5 A Change Request can emanate from either Party and (where the Change Control Procedure applies as opposed to any other procedures described in this Schedule) will be documented as a CCN in accordance with Section 3 below.
- 1.6 This Schedule also sets out a procedure for implementing Changes to Shared Services.

#### **2 CHANGE CLASSIFICATION**

##### **2.1 Assessment of the type of Change**

- (a) The assessment of a Change is to:
  - (i) classify the Change in order to establish which of the procedures referred to in Section 2.2 below applies to the administration and implementation of that Change;
  - (ii) establish, where appropriate whether such Change has the potential for an increase or a reduction in the Service Charges (as applicable) as described in Section 4.1 below; and
  - (iii) determine whether the proposed Change may have an impact on the performance or pricing of the Shared Services (and therefore constitute a Shared Service Amendment).

##### **2.2 Applicable Procedure**

- (a) The process described in this Schedule 7 recognises that there are four (4) procedures for the implementation of Changes that occur in the provision of the Services by the Supplier:

- (i) the System Change Management Procedure is the procedure by which System Changes are implemented, where such changes do not modify, add to or reduce the scope of the Services or modify the Agreement, and is intended to be a fast-track process for the implementation of day-to-day System Changes. Subject to Section 2.2(c) below, Sections 3 to 9 below shall not apply to System Changes;
  - (ii) the Change Control Procedure, described in Section 3 below, is the procedure for changing, reducing or adding to the Services or implementing other Changes to the Agreement (including Shared Services Amendments); and
  - (iii) the procedure set out in Annex 7-1, in respect of New Services.
- (b) The System Change Management Procedure is designed to operate alongside and interface where appropriate with the Change Control Procedure, it being the Parties' intention that this procedure be developed to circumvent the need to raise a CCN in such cases, subject always to budgetary and other constraints in place in accordance with the Customer's approvals process (which constraints shall not be exceeded unless the Supplier has first raised (and the Customer has agreed) an appropriate CCN in accordance with this Schedule).
- (c) It is possible for a Change which starts as a System Change to become a Change which goes through the Change Control Procedure, where such implementation alters the scope of the Services or some other material aspect of the Agreement. References to "Changes" in Section 3 to 9 below shall not include Changes which are implemented in accordance with the System Change Management Procedure unless the Change Control Procedure is also required for the implementation of such Changes.

### 3 CHANGE CONTROL PROCEDURE

This Section 3 sets out the procedure to be followed to raise, request, record, reject and agree Changes which are not implemented using the System Change Management Procedure.

#### 3.1 CCNs

- (a) All CCNs will be authorised by an authorised representative of the Party that requests the Change, who will act as the CCN sponsor throughout the Change Control Procedure. CCNs will be presented to the appropriate authorised representative who will acknowledge receipt of the CCN.
- (b) All Changes will further be classified into the following categories ("**Priority Categories**") by the originator:
  - (i) Priority 1 (urgent); or
  - (ii) Priority 2 (normal).

It is also possible that Changes may fall into more than one (1) Priority Category, in which case the CCN shall specify the Priority Categories into which the elements of the Change are divided. The priority classification of Changes

may be changed by agreement between the authorised representatives of the Parties' respective Contract Management Teams.

- (c) The recipient of a Priority 1 CCN will acknowledge receipt within one (1) Working Day of receipt of a CCN. Thereafter, the Parties will agree an accelerated timetable to ensure that a Priority 1 CCN is dealt with as quickly as practicable.
- (d) For all other CCNs, the recipient shall acknowledge receipt within two (2) Working Days of receipt of the CCN.
- (e) It is the intention of the Parties that the Change Control Procedure shall not cause unnecessary administrative burdens. This may include issuing a single CCN on a quarterly basis to cover a number of small Changes.

### 3.2 **Supplier's Obligations**

Irrespective of which Party raises the CCN, for each CCN the Supplier shall:

- (a) agree with the Customer an appropriate timetable for the completion of its obligations under this Section 3.2;
- (b) assess the CCN and complete the CCN in accordance with the timetable agreed with the Customer pursuant to Section 3.2(a) above; and
- (c) in completing the CCN, provide, as a minimum:
  - (i) a description of the Change and whether the Supplier considers that the Change is a New Service and should be dealt with in accordance with Annex 7-1;
  - (ii) where the Commercial Impact Procedure is applicable, the information that is required by Section 4.2 below;
  - (iii) a list of deliverables required for implementing the Change;
  - (iv) a timetable for implementation of the Change;
  - (v) an Impact Analysis in accordance with Section 3.3, including details of the impact (if any) on the provision of Shared Services;
  - (vi) any relevant criteria and how the Change will be tested (if applicable);
  - (vii) (for Supplier initiated Changes) an assessment of the added value of the Change to the Customer; and
  - (viii) proposed amendments to the Agreement as required.

### 3.3 **Impact Analysis**

- (a) The purpose of an Impact Analysis is to provide a context for a discussion around the approval and implementation of the proposed Change.



- (b) The Impact Analysis will consider the material effect of any proposed Change on any other existing Services provided under the Agreement. The Impact Analysis will also consider the effect on other applicable services provided by the Customer, the Supplier or a third party (including, for the avoidance of doubt, the Shared Services). If the proposed Change has no such impact, a “no impact” statement will be made.
- (c) The Impact Analysis will consider the impact of the proposed Change with the following factors taken into account as relevant to each particular Change:
  - (i) scope of the Agreement;
  - (ii) whether the proposed Change is a New Service (in which case the procedure set out in Annex 7-1 will apply);
  - (iii) consideration of location including any proposal to use Customer and/or Supplier-sourced Accommodation;
  - (iv) Service Levels;
  - (v) pricing elements and (where appropriate) impact on the Pricing File and the Service Charges;
  - (vi) delivery dates;
  - (vii) acceptance criteria, including End-User acceptance criteria where applicable;
  - (viii) any applicable disaster recovery services;
  - (ix) roll-back provision, including the cost and impact of such provision;
  - (x) the Customer’s policies and standards;
  - (xi) infrastructure requirements including new Equipment and/or Software;
  - (xii) impact on any Customer Assets, and the Supplier’s Assets;
  - (xiii) third party agreements;
  - (xiv) the impact of the proposed Change on the scope of the existing Services, including whether any of the existing Services should be correspondingly reduced or eliminated;
  - (xv) if applicable, the impact of the proposed introduction of any Software (other than Software which forms, or is to be provided as, part of the Services as at the Effective Date) including an assessment of whether such proposed Software satisfies the Customer’s security requirements set out in Schedule 12 (**Security**);
  - (xvi) the Customer’s objective of avoiding lock-in to a single supplier and enabling a smooth and effective transition (upon Termination) to a Successor Supplier (if applicable) for Services other than VPaaS Services;

- (xvii) any other matter reasonably requested by the Customer at the time of the Impact Analysis or reasonably considered by the Supplier to be relevant;
- (xviii) any effect on the provision of the Shared Services by the Supplier, as envisioned by Sections 5 and 6 of this Schedule 7;
- (xix) the potential for the Supplier to be entitled to propose a BAU Obligation Change in accordance with Section 5.1(b); and
- (xx) any effect on the provision of services by another supplier to the Customer pursuant to that supplier's contract of which the Supplier acting reasonably is aware of.

The Parties acknowledge that the above is not an exhaustive list. There may be more factors to consider in the context of a particular Change and some of the factors described above may not be relevant to every Change.

### 3.4 Preparatory or Development Work

- (a) Where the Customer agrees to the Supplier undertaking preparatory or development work for a Change which is the subject of a CCN that has not yet been authorised in accordance with Section 8 below, the charges for such work must be authorised prior to the commencement of such work by the Customer acting through its Contract Management Team.
- (b) Any agreement by the Customer to pay the Supplier for preparatory or development work as described in Section 3.4(a) above shall be without prejudice to the Customer's right to refuse to authorise the relevant CCN. For the avoidance of doubt, the Customer's refusal to authorise a CCN shall not release the Customer from its agreement to pay for preparatory or development work as described in Section 3.4(a) above.

## 4 CHANGE CLASSIFICATION

### 4.1 Assessment of the Change (Chargeable or Non-Chargeable)

- (a) All Changes shall be first assessed to establish whether the Change has the potential for an increase or a reduction in the Service Charges (as applicable), either in this Agreement or in the provision of Shared Services (including under the Prime Agreement), as envisioned by Section 5 and Section 6. Subject to Section 2.2(c) above, System Changes are non-chargeable by the Supplier and are included within the then-current Service Charges.
- (b) **Non-Chargeable Changes**

Changes that go through the Change Control Procedure are not automatically chargeable. The following are classifications of Changes for which the Supplier shall not be entitled to charge and for which the Commercial Impact Procedure will not apply:

- (i) Changes which were envisaged as at the Effective Date (as set out in Appendix B to Schedule 2 (**Services**));

- (ii) Changes required for the Supplier to carry out its obligations under the Agreement where the costs and expenses associated with such Changes are already included in the Service Charges;
  - (iii) Changes required for the Customer to carry out its obligations under the Agreement where the costs and expenses associated with such Changes are already included in the Service Charges;
  - (iv) Changes that are part of any Problem resolution procedure, including those set out in Schedule 4 (**Service Measurement**) to the extent that the Problem or issue results from a Default of the Supplier; and
  - (v) Changes required as a result of any Change in Law other than a Discriminatory Change in Law, including as specified in Clause 26.4(b) of the Terms and Conditions.
- (c) For Changes that are not excluded from the application of the Commercial Impact Procedure pursuant to Section 4.1(b) above, such Changes will be assessed in accordance with the Commercial Impact Procedure in Section 4.2 below and will be subject to the Supplier's approval in accordance with Section 8 below.

#### 4.2 The Commercial Impact Procedure (Chargeable Changes)

##### (a) General Changes

The Commercial Impact Procedure is the only process by which the Supplier may increase the Service Charges as a result of a Change (including a Shared Services Amendment which, for the avoidance of doubt, includes Resulting Changes) except for New Services (which are dealt with in accordance with Annex 7-1) or as otherwise expressed to the contrary in the Agreement.

##### (b) Procedure

Where the Parties consider that an increase or decrease in the Service Charges is applicable as a result of a Change, the following information will be provided by the Supplier in the appropriate sections of the CCN in accordance with Section 3.2 above to justify the basis of the increase or decrease:

- (i) an analysis of the reasons why the Supplier believes that its costs will be materially impacted by the Change and any applicable supporting documentation;
- (ii) reasonable evidence that the Supplier is performing efficiently and that it has reviewed any alternatives (including utilisation of existing Supplier Personnel and resources engaged in the provision of the Services together with providing information on the adverse impact on the Services or the Service Levels (if any)) to accommodate the requested Change;
- (iii) details of proposed one-off charges and/or changes to the Service Charges based upon the information described in Sections 4.2(b)(i) and 4.2(b)(ii) above, which shall remain valid for a period of six (6) months

from submission to the Customer or, in the case of components proposed to be provided by third parties, such shorter period as may be advised by the Supplier in the CCN (where the Supplier is unable to obtain the same for a six (6) month period);

- (iv) where applicable, the type of category of Change under this Section 4 and details of any impact on the delivery or pricing of the Shared Services (either under this Agreement or under the Prime Agreement); and
- (v) any other relevant information, including information justifying any proposed one-off charges or changes to the Service Charges and any base data and charging assumptions required by the Customer to verify such proposed changes.

#### **4.3 Administering the Change at no cost to the Customer**

Each Party shall be responsible for its own costs incurred in the preparation and assessment of CCNs, including the costs of the Impact Analysis, except to the extent that the Supplier is entitled to make a charge for such service as set out in Schedule 5 (**Charges**).

### **5 SHARED SERVICES AND BAU OBLIGATION CHANGES**

5.1 Where through the Impact Analysis at Section 3.3 or the Change classification at Section 4 the Supplier reasonably believes that:

- (a) any proposed Changes would amend or affect the Shared Services; or
- (b) the Supplier is entitled to propose a BAU Obligation Change,

the Supplier may notify the Customer that it believes the proposed Change raised by the Customer to be a Shared Services Amendment or propose a BAU Obligation Change (as applicable), following which the Parties shall follow the procedure set out in:

- (c) in respect of Section 5.1(a) above, Section 6 below; or
- (d) in respect of Section 5.1(b), Section 7 below.

5.2 The provisions in this Section 5 (and the provisions in the associated Sections 6 and 7) relating to Shared Services shall no longer be effective from the first date on which the Discontinued Prime Services are provided under this Agreement and the Prime Agreement comes to an end.

### **6 SHARED SERVICE AMENDMENTS**

#### **6.1 General**

6.2 The Parties agree that in exercising their rights and obligations in respect to any Shared Services Amendments:

- (a) they shall act reasonably and in good faith, and shall take reasonable measures to mitigate the impact and cost to the other Party of any such Changes; and

- (b) the Supplier shall be placed in a “no worse and no better” situation when compared to the exercise of the Parties’ rights and obligations in respect of any such changes prior to the Effective Date.

### 6.3 Determining the nature of the Change

- (a) Where the requesting Party to a Change is the Supplier, the Supplier shall, in addition to its other obligations in respect of any requested Change, also specify in the Impact Analysis for the relevant CCN:
  - (i) whether or not in its opinion (acting reasonably) the proposed Change is a Shared Service Amendment; and
  - (ii) whether or not the proposed Change is a Resulting Change, together with the reasons why and such supporting evidence thereof as the Customer shall require (acting reasonably).
- (b) Where the requesting Party to a Change is the Customer, the Supplier shall, in addition to its other obligations in respect of any requested Change, also specify in the Impact Analysis for the relevant CCN if the Supplier is of the opinion (acting reasonably) that the proposed Change is a Shared Service Amendment, together with the reasons why and such supporting evidence thereof as the Customer shall require (acting reasonably).
- (c) Where the Supplier has specified, pursuant to Section 6.3(a) or 6.3(b) above that, in its opinion, the requested Change is a Shared Service Amendment, then the following shall apply:
  - (i) if the Customer does not agree that the proposed Change is a Shared Service Amendment, it shall notify the Supplier within five (5) Working Days of the Supplier's notification under Section 6.3(a) or 6.3(b) above, and receipt of the required supporting evidence, and the Parties shall meet and discuss the reasons why the Supplier believes the proposed Change to be a Shared Service Amendment; and
  - (ii) where the Parties cannot reach agreement as to whether the proposed Change should be treated as a Shared Service Amendment within five (5) Working Days of the Customer's notification under Section 6.3(c)(i) above, the matter shall be referred to the Escalation Process.
- (d) Where the Supplier notifies the Customer that the proposed Change it is requesting under Section 6.3(a) above is a Resulting Change, the provisions of Section 6.5 shall apply.
- (e) If a Change has not originally been identified as a Shared Service Amendment, but at a later time is identified and agreed to by the Parties as a Shared Service Amendment, then it shall thereafter be implemented as a Shared Service Amendment in accordance with Section 6.4 below.

### 6.4 Implementing Shared Service Amendments

- (a) If the proposed Change is agreed or determined to be a Shared Service Amendment in accordance with Section 2, then:
  - (i) the Parties shall raise and agree the applicable Contingent Change under the Prime Agreement;
  - (ii) the Parties shall follow the remainder of the process set out in this Schedule 7 in respect of the CCN, save that once the terms of the CCN have been agreed the CCN shall not be executed unless the applicable contract change notice relating to the Contingent Change is also agreed and ready to be executed. Once the CCN under this Agreement and the contract change notice relating to the Contingent Change are agreed, they shall be executed on the same date and with the same effective date for the relevant changes; and
  - (iii) if the Parties agree, changes to the Shared Services or this Agreement may be made independently of the Prime Agreement, in which case:
    - (A) there shall be no changes made that would amend or affect the on-going provision of any services under the Prime Agreement; and
    - (B) the Customer shall be responsible for any additional reasonable costs which are properly incurred by the Supplier as a result of any amendments to any Shared Service which the Supplier can reasonably demonstrate are required to give effect to the Change whilst ensuring the on-going, unaffected provision of services under the Prime Agreement and provided that the Supplier has used all reasonable endeavours to mitigate such costs.

## 6.5 Resulting Changes

- (a) Where the Supplier notifies the Customer that a proposed Change is a Resulting Change, the Supplier shall ensure that the Impact Analysis for the CCN it submits specifies the details of the changes to this Agreement that would arise as a result of the event giving rise to the Resulting Change, including:
  - (i) any amendment to or effect on the Services provided under this Agreement; and
  - (ii) any change to the Charges, costs or expenses payable under this Agreement.
- (b) The Parties shall follow the process set out in this Schedule in respect of any CCN relating to a Resulting Change, save that:
  - (i) the Customer shall not be entitled to reject a CCN that is a Resulting Change;
  - (ii) the Customer shall be responsible for any additional reasonable costs which are properly incurred by the Supplier as a result of any amendments to any Shared Service which the Supplier can reasonably

demonstrate are required to give effect to the Change whilst ensuring the on-going, unaffected provision of services under this Agreement and provided that the Supplier has used all reasonable endeavours to mitigate such costs; and

- (iii) the Customer shall reimburse to the Supplier any costs reasonably incurred by the Supplier as a result of the Supplier being in breach of the Prime Agreement, to the extent such breach is caused by a change under the Prime Agreement which the Supplier is unable to implement in accordance with timescales or requirements for the change under the Prime Agreement as a result of the Supplier seeking agreement with the Customer to the Resulting Change under this Agreement and the Customer failing to cooperate as necessary with the Supplier to enable the Supplier to meet such timescales or requirements.

## 6.6 Materiality Threshold

- (a) Each Shared Service Amendment shall be subject to the following materiality threshold:
  - (i) if a Shared Service Amendment (including any Shared Service Amendment component of a wider Change) has an anticipated impact of increasing the then current total, annual Charges under this Agreement by less than ten thousand pounds (£10,000) from the planned date of implementation of such Shared Service Amendment, then the Supplier shall not seek to recover from the Customer such Charges impact (a "**De Minimis Shared Change**");
  - (ii) if the Supplier determines, acting reasonably, that there have been, during a rolling twelve month period, De Minimis Shared Changes with an aggregate, anticipated Charges value of no less than thirty thousand pounds (£30,000), then it shall be entitled to raise and recover, in accordance with this Agreement, the Charges impact for each subsequent Shared Service Amendment during that period, including any additional De Minimis Shared Changes; and
  - (iii) if a Shared Service Amendment (including any Shared Service Amendment component of a wider Change) results in an increase to the affected Charges but such Shared Service Amendment is part of a Change which is resulting in an overall reduction in the total, annual Charges under this Agreement, for example as a result of a reduction in scope, then the threshold referred to in Section 6.6(a)(i) shall not apply.

## 7 BAU OBLIGATION CHANGE

- 7.1 The process set out in this Section 7.1 shall only be invoked in exceptional circumstances and the Parties acknowledge and agree that this process shall only be used to the extent that the Supplier has reasonably determined that a BAU Obligation Change may apply, in which instance:

- (a) the Supplier shall notify the Customer promptly upon it reasonably determining that a Supplier obligation meets the criteria of the BAU Obligation and, potentially, a BAU Obligation Change is going to occur or has occurred;
- (b) the Supplier shall at the same time as making the notification under Section 7.1(a) raise a Change Request in respect of the potential BAU Obligation Change and provide the Customer with the information required pursuant to Section 3.3 (Impact Analysis);
- (c) the Parties shall promptly meet and, acting reasonably, agree as to whether the relevant and affected Supplier obligation meets the criteria of a BAU Obligation Change;
- (d) to the extent the Parties cannot agree within five (5) Working Days from the meeting referred to in Section 7.1(c) as to whether the relevant and affected Supplier obligation meets the criteria of a BAU Obligation Change, then the Parties shall escalate the Escalation Process; and
- (e) if the Parties reach agreement, then the relevant affected Supplier obligation shall be agreed as a BAU Obligation Change and, where applicable, the Supplier shall be entitled to propose a Change, as a Shared Services Amendment, in respect of that obligation,

(all of the above, the "**BAU Obligation Process**").

7.2 From the commencement of the BAU Obligation Process in respect of a proposed BAU Obligation Change, then:

- (a) changes to the Supplier's affected obligations shall be implemented as a Shared Service Amendment; and
- (b) the Supplier shall, in addition to the information provided in respect of all other Changes, specify within the relevant BAU Obligation Change request:
  - (i) the date by which the Shared Service Amendment relating to the BAU Obligation Change would need to be agreed in order for the Supplier to remain compliant with:
    - (A) this Agreement; and
    - (B) the Prime Agreement,
 (the "**Target Agreement Date**");
  - (ii) the Supplier's obligations under this Agreement with which the Supplier would be unable to comply unless and until the BAU Obligation Change is implemented (the "**Affected Obligations**"); and
  - (iii) the Supplier shall specify in respect of each Affected Obligation, the relevant date on which the Supplier's compliance would be affected by the relevant BAU Obligation Change.

7.3 If the Parties have not agreed to a Shared Service Amendment relating to a BAU Obligation Change by the Target Agreement Date then, from the Target Agreement



Date until such time as the Shared Service Amendment which relates to the relevant BAU Obligation Change is agreed by the Parties or, in the event that the Customer elects:

- (a) not to exercise the right which would otherwise have triggered the BAU Obligation Change; or
- (b) to allow the relevant BAU Obligation to continue to be performed without any change being made by the Supplier to the way in which the affected Shared Services are to be provided,

either such election by the Customer resulting in a "**Relief Period**", and:

- (c) the Supplier shall use its reasonable endeavours to comply in full with the Affected Obligations and shall mitigate to the extent possible the impact on the Services of the Affected Obligations;
- (d) other than as set out in Section 7.3(c) above, the Supplier shall be relieved of any liability under this Agreement in respect of any failure to comply with the Affected Obligations during the Relief Period and to the extent that such failure is a result of the failure to agree the Shared Service Amendment relating to the relevant BAU Obligation Change; and
- (e) the Customer hereby waives and shall not be entitled to exercise, at any time, its contractual or legal rights or remedies in respect of any breach by the Supplier of the Affected Obligations during the Relief Period,

and, if the Parties subsequently reach agreement on and implement the BAU Obligation Change, the Supplier shall thereafter be entitled to a reasonable extension of time for the performance of any of the Affected Obligations which have to be performed by a particular date to reflect any impact on the Supplier's ability to comply with the Affected Obligations caused by the delay in reaching such agreement and implementing such BAU Obligation Change.

## 8 APPROVAL

- 8.1 Prior to submission of a CCN to the Customer, the Supplier shall undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the Supplier shall consider the materiality of the proposed Change in the context of the Services affected by the Change and of the effects on the Agreement (as well as the Prime Agreement) as a whole that may arise from implementation of the Change. For the avoidance of doubt, such review is not intended to replace an Impact Analysis.
- 8.2 Subject to agreement on the price of a Change (where applicable) and unless any of the following apply:
  - (a) the Supplier is not technologically capable of providing a Change and such Change cannot be sourced from a third party;
  - (b) the Change is prevented by Law;

- (c) the Change requires or may result in an amendment to a VME Application's VPaaS Refresh Deadline, or the VPaaS Final Refresh Deadline;
- (d) the Change would require the Supplier to materially deviate from its ability to deliver the VPaaS Platform as a coherent whole in general alignment with its VPaaS platform offering across all VME/MVE users;
- (e) the Change relates to changes to the Technical Infrastructure;
- (f) where such Change relates to the introduction of a New Data Centre;
- (g) the Change would increase the liability of the Guarantor;
- (h) the Change would amount to New Services;
- (i) the Change is consequential on an Appointment of Representative under Clause 32.16 of the Terms and Conditions;
- (j) the Change would result in a reduction in the Charges; and/or
- (k) the Change would result in a change to the Charges that the Parties cannot agree upon from a Charges perspective,

the Supplier is obliged to implement all Changes via a CCN in accordance with the procedures set out in this Schedule where the Customer is the originating party.

- 8.3 The Customer shall review the CCN and, following such review, shall either:
- (a) accept or reject the CCN;
  - (b) request amendment to the CCN providing reasonable details of the items in the notification that the Customer rejects; or
  - (c) request more information from the Supplier as may be reasonably required by the Customer to review the CCN.
- 8.4 At the Customer's request, the Supplier shall re-submit its proposal with amendments as discussed between the Parties. Any agreed one-off charge, on-going separate charges or adjustment to the Service Charges will be subject to the prior approval of the Parties (the Customer acting through an authorised representative of the Customer's Contract Management Team and the Supplier acting through its Head of Commercial) by signature of the CCN in accordance with Section 8.9 below.
- 8.5 Where the Customer requires the Supplier to resubmit the CCN, the Customer shall provide reasonable detail to the Supplier of the parts of the CCN that do not meet with its approval, setting out reasons for such rejection. The Parties shall negotiate in good faith on those matters in the CCN that do not meet with the Customer's approval.
- 8.6 The Customer may, in its sole discretion, approve or reject the CNN where the Supplier is the originating party, except where a Change is reasonably and necessarily required to permit the Supplier to comply with any Law.
- 8.7 The Supplier shall notify the Customer if a Change is reasonably and necessarily required to enable the Supplier to deliver the Services in accordance with this

Agreement, including details of the impact on the Services if the CCN is not agreed, and the Customer may, acting reasonably, approve or reject such CCN. Where the Customer rejects the CCN, the Supplier shall be relieved from any Supplier Non-Performance as a Relief Event to the extent that the Supplier can demonstrate that the Customer's rejection of the CCN has caused such Supplier Non-Performance.

- 8.8 Subject to Section 8.6 above, the Customer shall be entitled to cancel the relevant CCN where the New Service or Change does not meet any agreed acceptance criteria.
- 8.9 Subject to Section 8.10 below, following an internal process of approval by the Customer and agreement between the Customer and the Supplier, the CCN will be signed by an approved member of the Customer's Contract Management Team or agreed alternative and the Supplier's Head of Commercial or agreed alternative.
- 8.10 No CCN to any part of this Agreement can be implemented without the prior written authorisation of the Customer in accordance with Section 8.9 above (as appropriate). If the Supplier proceeds with the implementation of a CCN without receiving prior written authorisation from an authorised representative of the Customer's Contract Management Team, such CCN will be entirely at the Supplier's cost and risk (and the Customer may require the Supplier to undo the CCN at the Supplier's expense), except in emergencies where a demonstrable immediate risk of material loss or damage to either Party exists. In the event of an emergency, the Supplier shall notify an authorised representative of the Customer's Contract Management Team as soon as practicable after implementation of the CCN, and subject to the Supplier demonstrating to the Customer that the costs incurred were reasonable in all the circumstances, the Parties shall retrospectively apply the Commercial Impact Procedure (where appropriate).
- 8.11 A CCN signed by both Parties shall constitute an amendment to the Agreement.
- 8.12 Until such time as a CCN is formally authorised by the Customer (as described in Section 8.10 above), the Supplier shall, unless otherwise agreed in writing by the Customer, continue to perform and be paid under the Agreement as if such Change had not been requested.

## **9 CHANGE MANAGEMENT**

- 9.1 The Supplier shall record and track the progress of all CCNs and report the status of CCNs as part of its contract management reports to the Customer as set out in Schedule 9 (**Reporting**).
- 9.2 The Supplier shall retain all information generated by or on behalf of the Supplier or made available to the Supplier by the Customer, whether written, electronic or otherwise, concerning each CCN, whether finally authorised or not, including receipts of payments, work undertaken, and the time involved for its respective employees and third parties, for a period of two (2) years following the Termination (including the expiry) of the Agreement.
- 9.3 The Customer shall have the right to review the information retained by the Supplier in accordance with Section 9.2 above on giving the Supplier reasonable written notice.
- 9.4 Without prejudice to the generality of Section 9.2 above, the Supplier shall document all costs incurred by the Supplier in undertaking any preparatory work and

implementing any Change, which documentation shall be supplied to the Customer, upon the Customer giving the Supplier reasonable written notice.

## **10 DISPUTES**

- 10.1 If there is a disagreement relating to a Change, including one referred to in Section 8.2 (a) to (k) (inclusive), then such disagreement must be mutually resolved prior to the implementation of the relevant Change, and such disagreement relating to any CCN (whether or not finally authorised) or Change, including the charges for the implementation of any Change, shall be referred by either of the Parties to the Escalation Process for resolution.
- 10.2 In respect of any such disputed Change, the Parties may, pending resolution of such proposed Change in accordance with Section 10.1 above, agree that the Supplier shall proceed with the relevant activity of the Change on an interim basis, as a Project on a time and materials basis, utilising the Rate Card. The Supplier may only charge 90% of its rates for work done under this interim Project. When the relevant disagreement is resolved, then the Parties shall reconcile the agreed Change's charge adjustments (if any) with the amount paid under the interim Project, and make any correcting payments necessary (from either Party to the other).

## **ANNEX 7-1**

### **NEW SERVICES**

#### **1 BIDDING FOR NEW SERVICES**

- 1.1 The Supplier and the Customer shall agree on the nature and scope of any New Service. In all cases where the New Service is substantially similar to any part of the Services provided by the Supplier, the Supplier shall always be invited by the Customer to provide a proposal and estimate for such New Service and the Customer shall give reasonable consideration to such proposal and estimate. If any New Service is agreed, it shall be implemented through a CCN in accordance with the Change Control Procedure, including the Service Levels for performance (as may be applicable), the related pricing, and appropriate amendments to the affected part(s) of this Agreement (if any).
- 1.2 Notwithstanding the above, the Customer may elect to solicit bids from third parties for the New Service and may contract with a third party for such New Service or elect to provide in-house resources to provide the New Service.

#### **2 PRICING FOR NEW SERVICES**

- 2.1 The unit prices or other charges for any New Services shall be agreed between the Parties or determined in accordance with Schedule 5 (**Charges**) by the application of the relevant rates in the Rate Card.

#### **3 TECHNOLOGY UPDATES**

- 3.1 The Parties anticipate, and the Agreement provides, that the Services may evolve and be supplemented, modified, enhanced or replaced over time to keep pace with technological advancements and improvements in the methods of delivering services. The Parties acknowledge that this will not be deemed to result in functions materially different from and in addition to the Services, and shall not be deemed to be New Services.

#### **4 ADDITIONAL CUSTOMER SUPPORT**

- 4.1 The Customer shall (reasonably promptly upon request by the Supplier from time to time) provide reasonable support and guidance to the Supplier in the development, preparation, discussion and agreement of proposals under the scope of the Agreement to other government departments, agencies and budget holders (including those within the Customer), subject always to procurement law constraints. Such reasonable support and guidance shall include the involvement, as reasonably requested by the Supplier, of members of the Customer's senior management team.

## ANNEX 7-2

## CHANGE CONTROL NOTE (CCN)

VPAAS AGREEMENT CCN xxx Version xx

## Change Control Note (CCN)

|                                                                                                                                                                                        |               |                        |           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------|-----------|
| <b>CCN No:</b>                                                                                                                                                                         | <b>FS xxx</b> | <b>Version Number:</b> | <b>xx</b> |
| (FOR HMRC INFORMATION ONLY)<br><b>Cross Reference Nos:</b>                                                                                                                             | Xxxx          |                        |           |
| Title:                                                                                                                                                                                 |               |                        |           |
| Originator:                                                                                                                                                                            |               |                        |           |
| Sponsor:                                                                                                                                                                               |               |                        |           |
| Date CCN No logged:                                                                                                                                                                    |               | Target signature date: |           |
| <b>Background</b>                                                                                                                                                                      |               |                        |           |
|                                                                                                                                                                                        |               |                        |           |
| <b>Contract Changes</b>                                                                                                                                                                |               |                        |           |
| <b>Contract changes based on contract version</b>                                                                                                                                      |               | <b>XX</b>              |           |
|                                                                                                                                                                                        |               |                        |           |
| <b>Financial Changes</b><br>(include here financial changes (including required changes to the Pricing File), plus any other charge information not covered by Contract Changes above) |               |                        |           |
|                                                                                                                                                                                        |               |                        |           |
| <b>Impact (including Shared Service impact Y/N?) (if required, please refer to Schedule 7 Section 3.3 for details of impact elements to be considered)</b>                             |               |                        |           |
|                                                                                                                                                                                        |               |                        |           |
| <b>Other Information</b>                                                                                                                                                               |               |                        |           |
|                                                                                                                                                                                        |               |                        |           |

| Authority to Proceed |              |
|----------------------|--------------|
| Approved             |              |
| For CUSTOMER         | For SUPPLIER |
| Signature            | Signature    |
| Name                 | Name         |
| Title                | Title        |
| Date                 | Date         |

**ANNEX 7-3****SYSTEM CHANGE MANAGEMENT PROCEDURE**

1. System Change Management is the process for the planning, testing, co-ordinating, implementing and monitoring of System Changes without adversely impacting service delivery to the Customer. The System Change Management Procedure shall determine the manner in which the Supplier shall control and manage changes in any and all aspects of the manner in which the Services are performed or provided (including platform configuration changes and changes in telecommunications transport technology). Of particular importance is the live environment and the System Changes initiated by the Customer, where the Supplier must provide an appropriate response and timely change completion while employing reasonable safeguards to maintain the continuity of the provision of the Services, including security, when such changes are implemented.
2. The System Change Management Procedure shall meet the following requirements:
  - 2.1 provide a set of sub-processes designed to:
    - (a) manage and control the response to planned changes (change management);
    - (b) capture the required information from service requests and implementation reports for inclusion in the configuration database (service provisioning);
    - (c) create and control execution of plans for approved Projects, reporting on progress and issues (project management);
    - (d) provide that ownership responsibilities for resources will be properly exercised (asset management); and
    - (e) assess the potential business impact to the Customer; and
  - 2.2 facilitate with the Customer co-ordination and communication across the Customer and the Services Recipients and facilitate measures to reduce the business impact and risk to the Customer of any change activity;
  - 2.3 provide processes for managing conflicts of timing, resources and priorities; and
  - 2.4 provide processes to establish clear ownership for individual changes to be established and maintained throughout the change process, with regular and appropriate progress updates communicated to those affected.
3. The Supplier shall:
  - 3.1 review, schedule and communicate proposed System Changes with the Customer to minimise disruption of normal business processes;
  - 3.2 conduct routine regular System Change management meetings with the Customer;



- 3.3 collect data on each System Change attempted, including the cause of any problems, measures taken to prevent reoccurrence, and impact on End-Users. This data will be summarised and reported to the Customer on a weekly basis. Promptly after being requested by the Customer, the Supplier shall provide the details of all instances and records of all changes to the live environment so that the Customer may:
  - (a) determine that the System Change Management Procedure was followed; and
  - (b) identify from whom changes were initiated and where and how changes occurred, including all relevant details;
- 3.4 clearly define and agree with the Customer the roles and responsibilities of the areas and/or functional groups that are involved in the change process, as well as formalise the communication process between affected parties; and
- 3.5 with the assistance of the Customer, develop a contingency plan for each change to the Customer's operations or business, including regression procedures, notification and escalation lists, work-around plans, affected resources and risk assessments.
- 4. System Changes in respect of the VPaaS Services may be implemented by the Supplier in accordance with the System Change Management Procedure for Changes provided they do not:
  - 4.1 have an adverse impact on the Customer;
  - 4.2 require a Change to the Agreement;
  - 4.3 have a direct impact on use of the VPaaS Services, the output of the VPaaS Services or the interoperability of the VPaaS Services; or
  - 4.4 involve the Customer in paying any additional Charges or other costs.

**SCHEDULE 8**  
**GOVERNANCE**

## SCHEDULE 8

### GOVERNANCE

#### 1 INTRODUCTION

1.1 This Schedule sets out:

- (a) the fundamental principles governing the behaviours of the Parties needed to enable the Parties to achieve the Governance Principles; and
- (b) the framework for the management and governance of this Agreement.

#### 2 GOVERNANCE PRINCIPLES

2.1 This Section sets out the principles which will underpin the operation and management of this Agreement and which will be used to assist in the resolution of any problems and issues that arise (the "**Governance Principles**").

2.2 In working together to resolve problems, issues and risks, the Parties will recognise and respect each other's primary business objectives which underpin their relationship.

2.3 In the conduct of business during the Term, the Parties, at all levels, shall strive to:

- (a) recognise that the maximum value of the relationship can only be achieved through working together collaboratively as if in a partnership and with an understanding of the joint objectives of this Agreement and also each other's objectives;
- (b) plan, organise, direct, and manage the relationship jointly;
- (c) assume the commitment and integrity of each other;
- (d) accept the need to be open and honest;
- (e) respect each other's confidence, in particular by not misusing commercial or confidential information provided by the other Party; and
- (f) jointly accept responsibility for finding an appropriate solution to problems.

2.4 The creation and maintenance of the Governance Principles that will sustain day-to-day contacts between the Parties will require commitment of the senior management teams. In order to reinforce desirable behaviours, these teams and other key managers will need to act consistently in a manner supportive of the Governance Principles. Accordingly, both Parties recognise the benefit in maintaining stability of key managers and their inter-relationships. Moves of these key managers will be jointly managed with the aim of minimising the risks of destabilising the overall relationship.

- 2.5 The Parties agree that they will use Commercially Reasonable Efforts to abide by the Governance Principles at all levels of their organisation involved in the operation of the Agreement.
- 2.6 The Parties agree that these Governance Principles:
- (a) apply as between the Customer and the Supplier, and under this Agreement do not extend to any other party; and
  - (b) are not intended to change or amend any other obligation of the Parties set out in this Agreement.

### 3 MANDATORY REVIEW BODIES

- 3.1 The Parties shall attend the following review bodies as described further in this Section 3 and Annex 8-1 to this Schedule.

| Review Meeting                   | Frequency   | Scope           | Reference              |
|----------------------------------|-------------|-----------------|------------------------|
| Strategic Leadership meetings    | Six-monthly | Cross-agreement | Section 2 of Annex 8-1 |
| Relationship Management meetings | Quarterly   | Cross-agreement | Section 3 of Annex 8-1 |
| Operational Management meetings  | Monthly     | Cross-agreement | Section 4 of Annex 8-1 |
| Contract Management Meetings     | Monthly     | This Agreement  | Section 3.4            |
| Weekly Service Review Meetings   | Weekly      | This Agreement  | Section 3.5            |

- 3.2 The joint review bodies that govern all agreements in force between the parties are set out in Annex 8-1 to this Schedule.
- 3.3 The roles of the required attendees are specified under each of the joint review bodies. The named individuals performing such roles as at the Effective Date are specified in Annex 8-2 (Meeting Attendees).
- 3.4 This Section 3.4 describes the Contract Management Meetings which will be held at the frequency stated in the table at Section 3.1 above:

(a) **Contract Management Meetings - Monthly**

**Purpose and Agenda**

- (i) The aims of the Contract Management Meetings are to:
  - (A) review all actions arising from the previous meeting;
  - (B) report on and consider the operation of this Agreement and track progress on the development and operation of contractual procedures;
  - (C) review outstanding CCNs, track progress on agreeing and executing CCNs and resolve any related issues or agree the basis on which the same will be escalated to the next Relationship Management Meeting or otherwise resolved;
  - (D) review and track progress of the Projects;
  - (E) consider and agree performance reports required under Schedule 9 (**Reporting**) (including the Service Performance Reports, Service Availability Reports, Problem Management Reports and the CHIEF IES Performance Report) and any matters relating to Service Credits in the event that contracted performance is not achieved;
  - (F) review, and seek to settle at the earliest opportunity, any contractual or performance issues between the Parties;
  - (G) determine any issues that need to be escalated in accordance with the procedure described in Section 5 below;
  - (H) plan for upcoming matters in the following months and review progress and actions needed to ensure that future contractual actions are likely to be performed on time and to this Agreement; and
  - (I) for the period from the Effective Date to the earliest of: (i) the ending of the use of VME for the VPaaS Services; or (ii) the end of the Term, carry out a monthly review of progress and any issues emerging from the Parties working to achieve the objective of being ready for use of MVE by such Services including:
    - 1) review the progress made that month to achieve the actions set out in Appendix C to Schedule 2 (**Services**) and any corrective action needed;
    - 2) review the progress made to achieve the dates set out in Appendix A to Schedule 2 (**Services**) and any corrective action needed; and

- 3) review the progress made in respect of the activities set out in Appendix B to Schedule 2 (**Services**).

Either Party shall be permitted to ask for other items to be added to the agenda or be raised as AOB at the Contract Management Meeting.

### **Attendees**

- (ii) The Contract Management Meetings shall be attended by:
  - (A) on the part of the Customer:
    - 1) the Customer's Contract Manager; and
    - 2) such other attendees as required for the items on the agenda for the applicable meeting; and
  - (B) on the part of the Supplier:
    - 1) the Supplier's Contract Manager; and
    - 2) such other attendees as required for the items on the agenda for the applicable meeting

Each Party shall, unless otherwise agreed, arrange for a delegate to be provided for each attendee listed, in the situation where an attendee cannot attend the Contract Management Meeting. Each individual delegate shall be of requisite seniority to allow the business of the Contract Management Meeting to be conducted if the normal attendees are unavailable or the Parties agree otherwise.

### **Pre-Meeting**

- (iii) The Parties shall provide the applicable Reports and Customer Reports in advance of this meeting in accordance with Schedule 9 (**Reporting**).

### **Meetings**

- (iv) The responsibility for arranging routine Contract Management Meetings shall be the joint responsibility of the Supplier's Contract Manager and the Customer's Contract Manager.
- (v) Either Party may request the other to attend an ad hoc Contract Management Meeting by giving no less than three (3) Working Days' notice requesting the same or earlier in the case of an emergency.
- (vi) Unless otherwise agreed between the Parties, each Contract Management Meeting shall be for a minimum of one (1) hour and shall be by telephone conference or face to face.

**Conduct of meetings**

- (vii) A representative of the Customer shall chair the meeting and conduct the proceedings in an orderly fashion against the standing agenda agreed between the Parties from time to time and additional agenda items or matters of AOB raised by either Party.
- (viii) At the first Contract Management Meeting the Parties shall agree the standing Agenda for all subsequent Contract Management Meetings.

**Minutes**

- (ix) Contract Management Meetings shall be minuted by the Customer and minutes circulated within seven (7) days of each meeting for agreement.
- (x) At each meeting the Parties shall agree and minute the time date and location of the next Contract Management Meetings so that they always have three (3) future meetings planned and arranged.

**Initial dates**

- (xi) The first Contract Management Meetings shall be held on:
  - (A) 16 November 2020 at 10.30am by telephone conference (at which meeting a date for a further meeting in February 2021 shall be agreed);
  - (B) 16 December 2020 at 10.30am by telephone conference (at which meeting a date for a further meeting in March 2021 shall be agreed); and
  - (C) 15 January 2021 at 10.30am by telephone conference at which meeting a date for a further meeting in April 2021 shall be agreed).

3.5 This Section 3.5 describes the Weekly Service Review Meetings which will be held at the frequency stated in the table at Section 3.1 above. The purpose of these meeting is dealing with operational aspects of managing this Agreement and in particular the Services and the activities set out in Annexes A, B and C to Schedule 2 (**Services**):

**(a) Weekly Service Review Meetings****Purpose and Agenda**

- (i) The aims of the Weekly Service Review Meetings are to:
  - (A) review all actions arising from the previous meeting;
  - (B) to provide an operational interface between the Supplier's service delivery owner who is operationally delivering the Services and the

key Customer operational manager responsible for receiving the Services:

- 1) so that each can understand the impact of the previous week's performance from a business perspective, not just for the Customer as a whole but for each of the Customer's 'Lines of Business' / 'DG areas';
- 2) to discuss and resolve any service or cross contract collaboration issues;
- 3) to address and deal with any short term and long term risks to the live Services and to ensure that adequate planning and mitigation is in place to ensure the effective running of the same;
- 4) to review Incidents ongoing or resolved and agree/approve any retrospective changes to high priority Incident status;
- 5) to review any need for urgent improvements to live Services;
- 6) to review, and seek to settle at the earliest opportunity, any operational or performance issues between the Parties;
- 7) to determine any issues that need to be escalated; and
- 8) to plan operationally for upcoming matters in the following weeks.

Either Party shall be permitted to ask for other items to be added to the agenda or be raised as AOB at the Weekly Service Review Meeting.

### **Attendees**

(ii) The Weekly Service Review Meetings shall be attended by:

(A) on the part of the Customer:

- 1) the Customer's Service Owners;
- 2) VME Programme Manager; and
- 3) such other attendees as required for the items on the agenda for the applicable meeting; and

(B) on the part of the Supplier:

- 1) the Supplier's Head of Delivery; and



- 2) such other attendees as required for the items on the agenda for the applicable meeting.

Each Party shall, unless otherwise agreed, arrange for a delegate to be provided for each attendee listed, in the situation where an attendee cannot attend the Service Review Meeting. Each individual delegate shall be of requisite seniority to allow the business of the Service Review Meeting to be conducted if the normal attendees are unavailable or the Parties agree otherwise.

### **Pre-Meeting**

- (iii) The Parties shall provide the applicable service Reports and Customer Reports in advance of this meeting in accordance with Schedule 9 (**Reporting**);

### **Meetings**

- (iv) The responsibility for arranging routine Contract Management Meetings shall be the joint responsibility of the Supplier's Service Owners and the Customer's Head of Delivery.
- (v) Either Party may request the other to attend an ad hoc Service Review Meeting by giving no less than three (3) hours' notice requesting the same or one (1) hour in the case of an emergency
- (vi) Unless otherwise agreed between the Parties each Service Review Meeting shall be for a minimum of one (1) hour and shall be by telephone conference or face to face.
- (vii) The Service Review Meetings will report to the Contract Management Meeting on a monthly basis.

### **Conduct of meetings**

- (viii) At the first Service Review Meeting the Parties shall agree the standing Agenda for all subsequent Service Management Meetings.

### **Minutes**

- (ix) Service Review Management Meetings shall be minuted by the Supplier and minutes circulated within two (2) days of each meeting for agreement.
- (x) At each meeting the Parties shall agree and minute the time date and location of the next Service Review Meetings so that they always have four (4) future weekly meetings planned and arranged.

### **Initial dates**

- (xi) The first Service Review Meeting shall be on the Effective Date.

- 3.6 For all governance meetings between the Parties as set out in this Schedule 8 (**Governance**), a written record shall be made in a timely manner by the Parties and a copy of the written record shall be circulated to all meeting attendees. The Parties shall maintain a joint library of all such written records. Where a minute of a meeting or an item on it cannot be agreed the Parties shall set out their differences in the minutes and agree any actions required as a result to park or escalate and resolve their disagreement.

#### **4 CUSTOMER GOVERNANCE ARRANGEMENTS**

- 4.1 The Parties will provide to each other and regularly update the names of the people who are members of the various governance bodies.
- 4.2 The Supplier shall be invited by the Customer, on an ad-hoc basis, to attend Customer boards and Customer management committees to discuss matters relating directly to the Services provided, or potentially to be provided, under this Agreement.
- 4.3 In addition, the Supplier has a standing invitation to attend, or shall participate fully when agreed in a number of other Customer management bodies as required (but may be excluded when matters of a sensitive nature, or which relate to the performance of this Agreement, are being considered).

#### **5 ESCALATION PROCESS**

- 5.1 If any issue of concern arises between the Customer and the Supplier, the Parties will use Commercially Reasonable Efforts to resolve such issue at the level at which such issue originates as quickly as the circumstances allow and in accordance with the provisions of Sections 5.2 to 5.15 below.
- 5.2 The hierarchy of levels of the Escalation Process are (from low to high):
- (a) Weekly Service Review Meetings;
  - (b) Contract Management Meetings;
  - (c) an *ad hoc* meeting of the Customer's Senior IT Business Owner and/or Commercial Deputy Director and the Supplier's Client Managing Director HMRC; and
  - (d) Strategic Leadership Meetings (as set out in Annex 8-1).
- 5.3 Where an issue arises which cannot be resolved at the level at which such issue originates the Customer and the Supplier may refer it to the next highest level in the Escalation Process as set out in this Section 5.2 above unless one Party requests that a particular issue receives consideration more quickly or at a more senior level, in which case the issue will be escalated to that level.
- 5.4 This Escalation Process is intended to be a guide for the Parties to resolve issues rapidly as they arise. It is not intended that this Escalation Process should be operated inflexibly or so as to prevent an issue being resolved at the most appropriate level as quickly as possible.

- 5.5 Where, at any level, it is decided that the issue has been properly escalated, the Parties will use Commercially Reasonable Efforts to resolve the issue.
- 5.6 Where a resolution is agreed, the decision, together with any implementation plan or other consequences, will be set out in writing and signed by the Parties.
- 5.7 Except where an issue requires rapid resolution, escalation of an issue will be by written Issue Statement to the next level by the Party escalating the issue. The "**Issue Statement**" will contain at least the following information:
- (a) name and business address of originator;
  - (b) date the issue was first raised;
  - (c) description of the issue, including any history of similar problems;
  - (d) the implications of the issue, its severity and the degree of urgency involved;
  - (e) an estimate of the current, and potential, cost of the issue; and
  - (f) names and addresses of others involved who may need to be consulted.
- 5.8 This Escalation Process will be overseen and managed via the Contract Management Meetings. Where the issue cannot be resolved at the Contract Management Meetings, the Parties must document the issues and interpretation of the contractual position fully. This means that, in addition to the information provided in Issue Statement, both Parties will set out their understanding of the issue, any contractual perspective relied on, and the impact of the issue on the Parties before escalating to the Strategic Leadership Meetings.
- 5.9 Within five (5) Working Days of a decision to escalate, an Issue Statement will be produced and agreed between the originator and his counterpart to whom a copy of the Issue Statement will be provided. Where the Issue Statement cannot be agreed, any additional comments the other party may require will be appended to the Issue Statement.
- 5.10 Where an issue requires rapid resolution, the originator may contact the next level in his organisation, and his counterpart, by telephone, or in person, and follow up with the written Issue Statement within five (5) Working Days.
- 5.11 Where required in order to perform its obligations under this Agreement the Supplier shall work with other suppliers of the Customer. The Supplier will act professionally in all of its dealings with other suppliers of the Customer and in accordance with the Governance Principles. Where an issue has arisen between the Supplier and another supplier of the Customer that relates to the performance of the Supplier's obligations to the Customer under this Agreement:
- (a) the Supplier shall in the first instance use its reasonable endeavours to resolve such issue directly with that supplier by commercial negotiation and only where necessary should issues be escalated to the Customer in accordance with this Schedule 8 (**Governance**); and

- (b) the Customer shall ensure that the Customer's other supplier shall also in its performance of that other supplier's obligations to the Customer shall in the first instance use its reasonable endeavours to resolve such issue directly with the Supplier.
- 5.12 If either Party to this Agreement has reasonable grounds to believe that any issues that are subject to the Escalation Process involve both the Supplier and other suppliers of the Customer ("**Related Third Parties**"), such Party may serve a notice on the other requesting that the issue be treated as a multi-party dispute ("**Multi-Party Dispute**"), setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that issue. The Parties shall agree within five (5) Working Days whether the issue is:
  - (a) a Multi-Party Dispute, in which case the Customer shall serve a notice to that effect, specifying the Related Third Parties ("**Multi-Party Procedure Initiation Notice**"); or
  - (b) not a Multi-Party Dispute, in which case the Escalation Process shall continue to apply.
- 5.13 A Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising executive level representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
  - (a) the Customer;
  - (b) the Supplier; and
  - (c) each Related Third Party involved in the Multi-Party Dispute,  
(together "**Multi-Party Dispute Representatives**").
- 5.14 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
  - (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall endeavour to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
  - (b) the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice in **Redacted** (or such other place as the Parties may agree) at such time as the Parties may agree or, if the Parties do not reach agreement on the time within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time specified by the Customer, provided that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

- (c) in seeking to resolve or settle any Multi-Party Dispute, the Parties shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and between the Customer and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

5.15 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty (20) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) the Customer shall be required (within a further ten (10) Working Day) to determine a proposed resolution of the Multi-Party Dispute by notice in writing to the Supplier and all Related Third Parties for acceptance by each of them ("**Customer Proposed Determination**"); and
- (b) in the event that Customer Proposed Determination is not accepted by any of the Supplier or any of the Related Third Parties, or the Customer elects not to determine a Customer Proposed Determination within the relevant time period, either Party may invoke the Alternative Dispute Resolution process in which case Section 5.16 shall apply. For the avoidance of doubt any such Alternative Dispute Resolution process shall operate as between the Parties only, but the Supplier agrees to provide reasonable cooperation to the Customer in regard to any similar mediation process operated as between the Customer and any of the Related Third Parties in respect of any issues which involve the Supplier, including, where reasonably required, attending as a witness..

## 5.16 **Alternative Dispute Resolution**

If an issue is not resolved by the process set out in Sections 5.2 to 5.10, or Sections 5.11 to 5.15, above as applicable, the Customer or the Supplier may invoke the following Alternative Dispute Resolution process which will require both Parties to adhere to the following procedure:

- (a) either Party may propose to the other(s) in writing that structured negotiations are entered into with the assistance of a Neutral Adviser;
- (b) the Neutral Adviser will either be agreed upon by the Parties or, in the absence of agreement, appointed by the Centre for Effective Dispute Resolution Process (CEDR);
- (c) within fourteen (14) days of the appointment of the Neutral Adviser, the Parties will meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations;
- (d) unless concluded with a written legally binding agreement, all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any other proceedings;

- (e) the Parties may request the Neutral Adviser to issue written recommendations, and if the Neutral Adviser is willing to make such recommendations and the Parties accept such recommendations or otherwise reach agreement on the resolution of the dispute, such agreement will be reduced to writing and, once it is signed by the authorised representatives of each Party, will be binding on the Parties; and
- (f) in the event that Alternative Dispute Resolution process is initiated in accordance with this Section 5.16 and the Parties fail to reach agreement in the structured negotiations within sixty (60) days of the appointment of the Neutral Adviser (or such other period as may be agreed by the Parties having due regard to the circumstances) any Party may withdraw from the structured negotiations. Any continuing dispute or difference between the Parties may then be referred to the English courts.

5.17 Unless agreed otherwise by the Parties, each Party will bear its own costs and expenses associated with participating in the processes set out in Sections 5.2 to 5.10 and Sections 5.11 to 5.15 and in the Alternative Dispute Resolution process and any third party costs, including fees payable to the Neutral Adviser and in relation to the hiring of a venue, will be shared equally by the Parties.

**5.18 Special Procedure following a Notice of Termination**

If one Party has delivered a notice of Termination of the Agreement to the other Party, and there is a dispute between the Parties as to such Termination or its effect then the Customer's director with overall responsibility for the Agreement and the Supplier's senior executive with overall account responsibility for the Agreement (or a nominee appointed by such persons or the relevant individual holding a similar position) shall meet within fourteen (14) days after the date of such delivery for the purpose agreeing how to address the dispute. The officers referred to above may include as attendees at such meeting a reasonable number of business managers and/or legal or other advisors as such officers require to assist in the purpose of such meeting. For the avoidance of doubt this engagement process shall not delay or prevent a valid Termination.

**5.19 Formal Dispute Resolution**

Nothing in this Schedule will prevent either Party from at any time commencing court proceedings relating to any dispute arising from the Agreement after having notified the other Party in writing of its intention to withdraw from the procedures set out in this Section 5.

**6 CONTRACT MANAGEMENT PROCEDURES**

- 6.1 The Supplier and the Customer shall both, by the Effective Date, have in place internal corporate governance arrangements to manage their roles and responsibilities under this Agreement that meet Good Industry Practice.
- 6.2 Both Parties shall fully co-operate with the other and its management team in the operation of the procedures set out in this Section 6.

6.3 The Supplier will support the operation of contract management procedures in accordance with Schedule 2 (**Services**).

6.4 The Customer's Contract Management Team shall manage the Agreement on behalf of the Customer using such procedures as set out in this Agreement or the Customer may from time to time reasonably require, including:

(a) Strategic Planning

Procedures required to determine, and report on, the contractual implications of strategic planning initiatives undertaken by the Customer.

(b) Financial Management

The Customer's procedure(s) will:

- (i) provide and maintain a forecast of the proposed Service Charges;
- (ii) review individual CCNs to ensure that the commercial impacts are properly presented and incorporated into financial plans;
- (iii) with the support of the Supplier, take account of agreed CCNs, as well as projected CCNs and match the requirement to the funds available;
- (iv) make necessary commitments to ensure that the Customer obtains Services in the most cost-effective manner in accordance with the Agreement, while enabling the Supplier to have sufficient financial certainty through the ordering procedure set out in Schedule 6 (**Invoicing**); and
- (v) monitor the consumption of resource against levels committed and track expenditure in accordance with the procedures set out in Schedule 5 (**Charges**) and Schedule 3 (**Projects and Rate Based Services**).

(c) Performance Monitoring

This Customer procedure will collate information from other procedures, including the requirements of Schedule 4 (**Service Measurement**) and Schedule 9 (**Reporting**), and present it in agreed formats for required reporting cycles in order to:

- (i) provide user information;
- (ii) enable performance trends to be properly monitored;
- (iii) provide management information regarding:
  - (A) speed of response;
  - (B) problems and faults; and

(C) adherence to quality standards; and

(iv) facilitate the operation of the Service Credit arrangements and perform the necessary calculations.

(d) Cost Monitoring

This procedure will in respect of the Modernisation Services and Application Services only:

(i) enable the Customer to receive and review financial information from the Supplier;

(ii) regulate changes in the Supplier's costs and track the impact of CCNs on the Charges;

(iii) undertake an annual review of the Supplier's financial performance on these aspects of the Agreement; and

(iv) track any relevant purchases, monitoring the Supplier's procurement function.

(e) Performance of Annual Review of Contract Prices

This procedure will agree any necessary adjustments to the Rate Card(s) used for Charges in respect of in respect of the Modernisation Services and Application Services only as a result of an annual review of the Supplier's cost rates in accordance with Schedule 5 (**Charges**).

(f) Responding To Performance Reporting And Escalation

This procedure will initiate action to resolve problems raised through other procedures using the Escalation Process, as appropriate.

(g) Performance Improvements

This procedure will evaluate statistics from other procedures to determine the potential for the Supplier performance improvement in the provision of the Services and in the Service Levels. It will also review the Supplier's performance improvement plans, track their implementation and compare the actual delivered benefits with those predicted.

(h) Tracking of Third Party Use Of Assets

This procedure will provide for the establishment, updating and maintenance, of a register of Customer Assets and Supplier Assets used in the provision of the Services including third party use. It will further support the Customer's requirements for assuring the security and confidentiality of Customer Data.



(i) Accommodation

This procedure will support the resolution of issues arising from the Supplier's occupation of the Customer's Accommodation (whether exclusive occupancy property or shared occupancy property) and from the provision of services to the Supplier by the Customer relating to such Customer Accommodation. It will also track the performance by the Customer against its obligations in Schedule 15 (**Accommodation**).

(j) Change Control

This procedure will control and manage Change in accordance with Schedule 7 (**Change Control Procedure**).

(k) Audit Access

This procedure will facilitate the conduct of Audits in accordance with Schedule 10 (**Audit Access**).

(l) Monitor Unit Costs

This procedure is an internal Customer process. It will calculate the unit costs of technology services provided to the Customer, monitor trends and report progress towards key objectives.

(m) Administration

This procedure will serve all other procedures set out in this Agreement for the distribution of outputs between the Customer and the Supplier under the Agreement. In addition, it will maintain libraries, call logs and audit trails in connection with the provision of the Services and the performance of the Agreement.

(n) General

Such other processes as are reasonably necessary to manage the Agreement.

## **7 PERFORMANCE IMPROVEMENTS**

- 7.1 Any proposals by the Supplier for improving the provision of the VPaaS Services shall ensure the provision of the VPaaS Services at least to the standards required by the Agreement or as subsequently agreed by the Customer.
- 7.2 The Supplier shall discuss proposals for improving the provision of the VPaaS Services with the Customer in accordance with the performance improvements procedure set out in Section 6.4(g) above.
- 7.3 Both Parties shall at all times give due regard to any proposals made by the other for improving the provision of the Services.

## **8 GOVERNANCE REVIEW**

- 8.1 Twelve (12) months following the Effective Date, the Parties shall review and, if appropriate, agree any necessary changes to this this Schedule 8 (**Governance**).

**ANNEX 8-1****CROSS-AGREEMENT BODIES****1 INTRODUCTION**

- 1.1 This Annex 8-1 describes the joint review bodies that govern all agreements in force between the Parties and all services delivered by the Supplier to the Customer under those agreements. The bodies are made up of representatives from the Parties. As described below, the three (3) cross-agreement joint review bodies shall meet regularly during the Term.

**2 STRATEGIC LEADERSHIP MEETINGS – SIX MONTHLY**

- 2.1 The Strategic Leadership Meetings shall take place as a minimum twice every year starting on 1 October each year of the Term.

**Purpose**

- 2.2 The aims and purpose of the Strategic Leadership Meetings shall be for the Parties executive officers to meet and discuss the operation and future of the services provided by the Supplier for the benefit of the Customer including to:
- (a) review, discuss and agree the strategic direction of the relationship between the Parties across all agreements in force between the Parties and all services delivered by the Supplier to the Customer;
  - (b) review progress against the joint objectives and the joint business plan;
  - (c) review and assess the success of this Agreement and other agreements between the Parties; and
  - (d) by exception, consider and resolve as any issues escalated to it which have not been capable of resolution at other levels of governance.

**Attendees**

- 2.3 The Strategic Leadership Meetings shall be attended by:
- (a) on the part of the Customer, the HMRC Chief Executive and First Permanent Secretary, Chief Digital Information Officer and Chief Financial Officer; and
  - (b) on the part of the Supplier, the Head of UK and Ireland region, and Client Managing Director HMRC,

or such individuals of requisite seniority if the aforementioned individuals are not available or the Parties agree otherwise.

**Meetings**

- 2.4 The responsibility for arranging routine Strategic Leadership Meetings shall be that of the Supplier's Client Managing Director HMRC.

- 2.5 Either Party may request the other to attend an ad hoc Strategic Leadership Meeting by giving no less than seven (7) days' notice requesting the same.
- 2.6 Unless otherwise agreed between the parties each Strategic Leadership Meeting shall be for a minimum of one (1) hour and shall be face to face.
- 2.7 Strategic Leadership Meetings shall alternate between the Customer's premises and the Supplier's premises.

### **Agenda**

- 2.8 The Supplier's Client Managing Director HMRC shall invite matters for discussion fourteen (14) days prior to each Strategic Leadership Meeting and shall issue an agenda seven (7) days in advance.

### **Conduct**

- 2.9 The Parties shall be free to discuss and agree how to conduct each Strategic Leadership Meeting.

### **Minutes**

- 2.10 Strategic Leadership Meetings shall be minuted by the Customer and minutes circulated within seven (7) days of each meeting. Unless otherwise agreed between the Parties the intent of Minutes for the Strategic Leadership Meetings is to record any agreement reached and not to reflect all of the discussion.
- 2.11 At each Strategic Leadership Meeting the Parties shall agree the time date and location of the next Strategic Leadership Meetings so that they always have two (2) future meetings planned and arranged.

### **Initial dates**

- 2.12 The first Strategic Leadership Meetings shall be held on:
  - (a) 2 July 2021 at 10.30am (at which meeting a date for a further meeting in January 2022 shall be agreed); and
  - (b) 22 January 2022 at 10.30am (at which meeting a date for a further meeting in July 2022 shall be agreed).

## **3 RELATIONSHIP MANAGEMENT MEETINGS - QUARTERLY**

### **Scope**

- 3.1 The Relationship Management Meetings held between the Customer and the Supplier will at a minimum cover the following areas:
  - (a) Customer and Supplier business direction and strategic planning across all agreements in force between the Parties and all Services delivered by the Supplier to the Customer;
  - (b) relevant technology direction;

- (c) progress against agreed key objectives and the joint business plan;
- (d) review and manage the relationship development and the strategic initiatives in the joint business plan to ensure they remain on track and drive anticipated change and value; and
- (e) identify further opportunities that will be incorporated in the joint business plan going forward.

### **Purpose**

3.2 The aims and purpose of the Relationship Management Meetings are to:

- (a) allow the Customer to update the Supplier as to its business plans and requirements and if possible discuss how to align these to the joint business plans being followed by the Parties;
- (b) review, discuss and agree the management of this Agreement and all other agreements between the Parties;
- (c) review and discuss progress achieved and any issues arising in respect of the relationship between the Parties during the previous Quarter;
- (d) by exception to consider and resolve as any issues including any issues escalated to it which have not been capable of resolution at other levels of governance and in default of resolution of such issues to refer the same to the next Strategic Leadership Meetings if resolution is not possible in the meantime;
- (e) review the adequacy and effectiveness of the prevailing governance arrangements in the light of any relevant management, operational and audit reports;
- (f) ensure that senior managers on both sides have a common understanding of the current operation of this Agreement and all other agreements between the Parties;
- (g) review the overall operation of the agreements and identify any problem areas, in particular considering any issues and risks that might prejudice the relationship between the Parties or the successful operation of the Governance Principles;
- (h) evaluate each Party's skills and resource requirements, and where appropriate ensure that necessary on-going high-level technical and strategic skills are available to meet the Customer's requirements;
- (i) take a forward look to identify any future major developments and also any opportunities and risks that will potentially impact the Services; and
- (j) agree any necessary actions flowing from any of the above and to follow up any resultant action plans.

### **Attendees**

3.3 The Relationship Management Meetings shall be attended by:

- (a) on the part of the Customer:
  - (i) Director for Enterprise Platform Services;
  - (ii) CCM IT Assistant Director; and
  - (iii) such other attendees as required for the items on the agenda for the applicable meeting; and
- (b) on the part of the Supplier:
  - (i) Client Managing Director HMRC and Head of Delivery; and
  - (ii) such other attendees as required for the items on the agenda for the applicable meeting.

Each Party shall, unless otherwise agreed, arrange for a delegate to be provided for each attendee listed, in the situation where an attendee cannot attend the Relationship Management Meeting. Each individual delegate shall be of requisite seniority to allow the business of the Relationship Management Meeting to be conducted if the normal attendees are unavailable or the Parties agree otherwise.

#### **Pre-Meeting**

3.4 The Parties shall provide the applicable Reports and Customer Reports in advance of this meeting in accordance with Schedule 9 (**Reporting**).

#### **Meetings**

- 3.5 The responsibility for arranging routine Relationship Management Meetings shall be that of the Supplier's Client Managing Director HMRC.
- 3.6 Either Party may request the other to attend an ad hoc Relationship Management Meeting by giving no less than seven (7) days' notice requesting the same.
- 3.7 Unless otherwise agreed between the Parties each Relationship Management Meeting shall be for a minimum of one (1) hour and shall be face to face.
- 3.8 Relationship Management Meetings shall alternate between the Customer's premises and the Supplier's premises.

#### **Agenda**

3.9 The Supplier's Client Managing Director HMRC shall invite matters for discussion fourteen (14) days prior to each Relationship Management Meeting and shall issue an agenda seven (7) days in advance.

#### **Conduct of meetings**

3.10 Customer's Senior IT Business Owner shall chair the meeting and conduct the proceedings in an orderly fashion against the standing agenda agreed between the parties from time to time.

- 3.11 At the first Relationship Management Meeting the Parties shall agree the standing Agenda for all subsequent Relationship Management Meetings.

**Minutes**

- 3.12 Meetings shall be minuted by the Customer and minutes circulated within seven (7) days of each meeting.
- 3.13 At each Relationship Management Meeting the Parties shall agree and minute the time date and location of the next Relationship Management Meetings so that they always have three (3) future meetings planned and arranged.

**Initial dates**

- 3.14 The first Relationship Management Meetings shall be held on:
- (a) an agreed date in November 2020 at 10.30am (at which meeting a date for a further meeting in August 2021 shall be agreed);
  - (b) an agreed date in February 2021 at 10.30am (at which meeting a date for a further meeting in November 2021 shall be agreed); and
  - (c) an agreed date in May 2021 at 10.30am (at which meeting a date for a further meeting in February 2022 shall be agreed).

**4 OPERATIONAL MANAGEMENT MEETINGS – MONTHLY****Purpose**

- 4.1 The aims of the Operational Management Meetings are to report on and consider:
- (a) the Supplier's performance under the agreements and contract and risk management;
  - (b) commercial management;
  - (c) relationship and value work stream management; and
  - (d) service and programme review meetings.

**Attendees**

- 4.2 The Operational Management Meetings shall be attended by:
- (a) on the part of the Customer:
    - (i) Supplier Management Lead
    - (ii) CCM Assistant Director;
    - (iii) Director for Enterprise Platform Services; and
    - (iv) such other attendees as required for the items on the agenda for the applicable meeting; and

- (b) on the part of the Supplier:
  - (i) Head of Delivery;
  - (ii) VPaaS/CHIEF Service Owner; and
  - (iii) such other attendees as required for the items on the agenda for the applicable meeting.

Each Party shall, unless otherwise agreed, arrange for a delegate to be provided for each attendee listed, in the situation where an attendee cannot attend the Operational Management Meeting. Each individual delegate shall be of requisite seniority to allow the business of the Operational Management Meeting to be conducted if the normal attendees are unavailable or the Parties agree otherwise.

### **Pre-Meeting**

- 4.3 The Parties shall provide Reports and Customer Reports in advance of this meeting in accordance with Schedule 9 (**Reporting**).

### **Meetings**

- 4.4 The responsibility for arranging routine Operational Management Meetings shall be the joint responsibility of the Supplier's VPaaS/CHIEF Service Owner and the Supplier Management Lead for the Customer.
- 4.5 Either Party may request the other to attend an ad hoc Operational Management Meeting by giving no less than three (3) Working Days' notice requesting the same or earlier in the case of an emergency.
- 4.6 Unless otherwise agreed between the Parties each Operational Management Meeting shall be for a minimum of one (1) hour and shall be by telephone conference or face to face.

### **Agenda**

- 4.7 The Operational Management Meetings will follow a standing agenda agreed between the Parties to reflect the above purpose of these meetings. Either Party shall be permitted to ask for other items to be added to the agenda or be raised as AOB at the Operational Management Meeting.

### **Conduct of meetings**

- 4.8 The Customer's Supplier Management Lead shall chair the meeting and conduct the proceedings in an orderly fashion against the standing agenda agreed between the Parties from time to time and additional agenda items or matters of AOB raised by either Party.
- 4.9 At the first Operational Management Meeting the Parties shall agree the standing Agenda for all subsequent Operational Management Meetings.

### **Minutes**



- 4.10 Operational Management Meetings shall be minuted by the Customer and minutes circulated within seven (7) days of each meeting for agreement.
- 4.11 At each Operational Management meeting the Parties shall agree and minute the time date and location of the next Operational Management Meetings so that they always have three (3) future meetings planned and arranged.

**Initial dates**

- 4.12 The first Operational Management Meetings shall be held on:
- (a) an agreed date in November 2020 at 10.30am by telephone conference (at which meeting a date for a further meeting in February 2021 shall be agreed);
  - (b) an agreed date in December 2020 at 10.30am by telephone conference (at which meeting a date for a further meeting in March 2021 shall be agreed); and
  - (c) an agreed date in January 2021 at 10.30am by telephone conference at which meeting a date for a further meeting in April 2021 shall be agreed).

## ANNEX 8-2

## MEETING ATTENDEES

## SUPPLIER ATTENDEES

| Supplier Role                 | Name            | Notes |
|-------------------------------|-----------------|-------|
| Contract Manager              | <i>Redacted</i> |       |
| Head of Delivery              | <i>Redacted</i> |       |
| Client Managing Director HMRC | <i>Redacted</i> |       |
| VPaaS/CHIEF Service Owner     | <i>Redacted</i> |       |
| Head of UK and Ireland region | <i>Redacted</i> |       |

## CUSTOMER ATTENDEES

| Customer Role                                                              | Name            | Notes                                                          |
|----------------------------------------------------------------------------|-----------------|----------------------------------------------------------------|
| Contract Manager                                                           | <i>Redacted</i> |                                                                |
| Service Owner – CESA                                                       | <i>Redacted</i> |                                                                |
| Service Owner – VAT                                                        | <i>Redacted</i> |                                                                |
| Service Owner – CHIEF                                                      | <i>Redacted</i> |                                                                |
| Senior IT Business Owner /<br>Director for Enterprise Platform<br>Services | <i>Redacted</i> |                                                                |
| Commercial Deputy Director                                                 | <i>Redacted</i> |                                                                |
| VME Programme Manager                                                      | <i>Redacted</i> | Provides updates on VME<br>transformation and<br>modernisation |
| HMRC Chief Executive and First<br>Permanent Secretary                      | <i>Redacted</i> |                                                                |
| Chief Digital Information Officer                                          | <i>Redacted</i> |                                                                |
| Chief Financial Officer                                                    | <i>Redacted</i> |                                                                |

|                           |                        |                                        |
|---------------------------|------------------------|----------------------------------------|
| CCM IT Assistant Director | <b><i>Redacted</i></b> | Cross agreement meetings               |
| CCM IT Assistant Director | <b><i>Redacted</i></b> | Meetings in relation to this Agreement |
| Supplier Management Lead  | <b><i>Redacted</i></b> |                                        |

**SCHEDULE 9**  
**REPORTING**

## **SCHEDULE 9**

### **REPORTING**

#### **1 SCOPE**

- 1.1 This Schedule sets out the range of Reports and Customer Reports that the Supplier and the Customer shall provide during the Term to enable the Parties to manage the Agreement effectively. This Schedule does not document each and every Report and Customer Report required but instead sets a framework for reporting which shall:
- (a) deliver accurate and relevant information in respect of the performance of the Services and their development and transition;
  - (b) support sound governance of the Agreement and the principles of partnership described in Schedule 8 (**Governance**);
  - (c) support and evidence the agreed commercial arrangements in respect of assets, finance, and resource usage as those commercial arrangements are made;
  - (d) support the planning processes for future business delivery; and
  - (e) provide for ongoing development of reporting requirements.
- 1.2 This Schedule also sets out the Customer Reports that the Customer shall provide during the Term to enable the Supplier itself to report and also to manage the Agreement and the VPaaS Services effectively.
- 1.3 Annex 9-1 sets out the main Reports and Customer Reports required by the Customer and Supplier (respectively).
- 1.4 Nothing in this Schedule shall constrain the Customer from reasonably requesting data and information relating to the provision of the Services from the Supplier on an ad hoc basis and in accordance with the Agreement. The Parties agree that, for the purposes of determining whether requests from the Customer for such data or information are reasonable, a total effort on producing ad hoc data and/or information in excess of three (3) Man-days in any calendar month in addition to providing the other Reports required under this Schedule shall be considered unreasonable.
- 1.5 Nothing in this Schedule shall constrain the Supplier from reasonably requesting data and information relating to the provision of the Services from the Customer on an ad hoc basis and in accordance with the Agreement.
- 1.6 As methods of managing and optimising the effectiveness and value of information systems evolve during the Term, the Parties shall work with each other, within the terms of normal business development, to investigate potential benefits to them and the Services of adopting new technologies and/or methodologies which deliver improved reporting.

#### **2 REPORTS AND CUSTOMER REPORTS**

- 2.1 Annex 9-1 contains the main Reports.

- 2.2 Further reporting will be expected of the Supplier as part of the provision of the Services and their performance. In order to permit such reporting the Customer will provide to the Supplier the Customer Reports set out in Annex 9-3 and also provide such information as is reasonably requested by the Supplier in accordance with Clause 7.7 of the Terms and Conditions.
- 2.3 In order to effectively manage some aspects of the Services, in addition to the Customer Reports set out in Annex 9-3, the Customer shall provide regular reports and updates on the following matters as reasonably requested by the Supplier:
- (a) The activities and progress of the Customer in performing its obligations and tasks required in accordance with Appendix B (**Move to MVE**) and Appendix C (**Changes needed to VPaaS**) to Schedule 2 (**Services**) to ensure the VPaaS Refresh Deadlines are met in accordance with Appendix A (VME Applications) to Schedule 2 (**Services**);
  - (b) The progress and timing of the Customer's various activities to modernise and replace some or all of the functionality performed by the VME Applications;
  - (c) Developments to the VME Applications;
  - (d) The Customer's changing business needs in respect of the matters supported by the VME Applications including, in particular, in the case of the CHIEF Application, the development and transition of the use of CHIEF Application and its required performance and sizing against evolving import and export changes; and
  - (e) Anticipated changes in consumption of GPLI by the VPaaS Services as a result of the Customer's plans and operations including reporting of anticipated changes resulting from calendar timing and business and political change.
- 2.4 Reports and Customer Reports shall be supplied via electronic and/or hardcopy media and in such format as required by the other Party.
- 2.5 Minor changes to the content and format of Reports requested by the Customer shall be carried out by the Supplier at no cost to the Customer. New reporting requirements or substantial changes to existing Reports and Customer Reports shall be agreed pursuant to the Change Control Procedure.

### 3 DELIVERY

- 3.1 Although different timings may be agreed between the Parties, the Supplier shall comply with the Customer's reporting requirements, as follows:
- (a) for daily Reports, by noon on the following Working Day;
  - (b) for weekly Reports, by noon on the first Working Day of the following week of the scheduled interval;
  - (c) for monthly Reports except as otherwise stated in Annex 9-1, by close of business on the fourth (4th) Working Day following the end of the month;

- (d) for quarterly Reports, by close of business on the eighth (8th) Working Day following the end of the Quarter;
- (e) for annual Reports, by close of business on the seventeenth (17th) Working Day following the end of the applicable Contract Year; and
- (f) financial accounting and reporting data, except as otherwise specified, as reasonably required by the Customer.

#### **4 RAW DATA**

- 4.1 The Supplier shall retain any raw data it has access to which is underpinning any Report for the relevant period to comply with the provisions of Schedule 10 (**Audit Access**), or for such other period as may be reasonably required by the Customer in order to allow the Customer to verify the relevant Report. Where necessary the Customer shall also retain the raw data underpinning any Customer Report for such other period as may be reasonably required by the Customer in order to allow the Customer to verify the relevant Report.

#### **5 DISTRIBUTION OF REPORTS**

- 5.1 Multiple hard copies of Reports may be required for delivery to appropriate Customer recipients.
- 5.2 The Customer reserves the right to determine the distribution lists for all Reports required under the Agreement.
- 5.3 The Supplier shall distribute Reports electronically as specified by the Customer.

#### **6 PERFORMANCE MONITORING AND REPORTING**

- 6.1 Within ten (10) Working Days of the end of each Measurement Period, the Supplier shall provide a Report to the Customer which summarises the performance by the Supplier against each of the Service Levels (the "**Performance Monitoring Report**")
- 6.2 Subject to the Customer providing Customer Reports reasonably required for this purpose, the Supplier shall carry out performance monitoring and review of performance by the Supplier against each of the Service Levels. The Supplier shall show the results of such monitoring and review within the Performance Monitoring Report. The method of performance reporting shall be in such format (and using such tools) as the Customer may reasonably request from time to time and or as otherwise agreed between the Parties.
- 6.3 Where the Parties have agreed that a Service Level cannot be measured using the tools currently available to the Supplier, the Supplier shall use Commercially Reasonable Efforts to provide the Performance Monitoring Report, or any other reports agreed between the Parties with respect to the monitoring and review of such Service Levels.
- 6.4 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, unless otherwise agreed at an operational level by the Parties, as a minimum, the following information:

**Information in respect of the Measurement Period just ended**

- (a) for each Service Level, the actual performance achieved over the Measurement Period which has just ended, and that achieved over the previous three (3) Measurement Periods;
- (b) a summary of all Service Level Failures that occurred during the Measurement Period;
- (c) where applicable, the Failure Severity Level of each Service Level Failure which occurred during the Measurement Period;
- (d) for any Service Level Failures relating to system Availability occurring during the Measurement Period, the root cause of the relevant Service Level Failure and the action being taken to reduce the likelihood of recurrence. Where a root cause cannot immediately be established an interim report is to be provided and updated subsequently when this is possible;
- (e) for any repeat Service Level Failures, actions taken or recommendations of action needed from the Customer to resolve the underlying cause and prevent recurrence;
- (f) the Service Credits to be applied, indicating the Service Level Failures to which the Service Credits relate;
- (g) the conduct and performance of any agreed periodic tests that have occurred;
- (h) such other details the Parties may reasonably agree from time to time;

**Information in respect of previous Measurement Periods**

- (i) a rolling total of the number of Service Level Failures that have occurred over the past six (6) Measurement Periods or, where six (6) Measurement Periods have not yet passed, such rolling number of Measurement Periods as applicable, including where relevant any Repeat Failure Counts;
- (j) the amount of Service Credits that have been incurred by the Supplier over the past six (6) Measurement Periods or, where six (6) Measurement Periods have not yet passed, such rolling number of Measurement Periods as applicable;
- (k) the conduct and performance of any agreed periodic tests that have occurred in such Measurement Period; and

**Information in respect of the next Quarter**

- (l) any scheduled service platform downtime for permitted maintenance and updates that have been agreed between the Parties for the next Quarter.

6.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) in accordance with Schedule 8 (**Governance**) to review the Performance Monitoring Reports. These meetings shall (unless otherwise agreed):



- (a) take place within fifteen (15) Working Days of the end of each Measurement Period;
  - (b) take place at such location and time (within Normal Working Hours) as the Customer shall reasonably require (unless otherwise agreed in advance); and
  - (c) be attended by the Supplier representative and the Customer representative.
- 6.6 The Supplier acknowledges and agrees that the Customer may, whilst it considers the Performance Monitoring Report, provide, acting reasonably and in good faith, its own assessment of the Supplier's actual level of performance against a particular Service Level. In the event of any dispute or difference between the Supplier's assessment and the Customer's assessment in respect of a Service Level, the Supplier's assessment shall, for the purposes of the calculation of the Supplier's level of actual performance in relation to the relevant Measurement Period (and any associated remedies) prevail. However, without prejudice to the foregoing, the Customer shall be entitled to subsequently escalate any remaining dispute or difference in accordance with the Escalation Process.
- 6.7 Both Parties shall be entitled to raise any reasonable additional questions and/or request any further reasonable information from the other Party regarding any Service Level Failure.
- 6.8 In addition to the requirements in this Agreement to maintain and provide appropriate documents and records, 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 of the Supplier.
- 6.9 The Supplier shall ensure that the Performance Monitoring Report, and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Customer are available to the Customer on-line and are capable of being printed.

**ANNEX 9-1**

**PART A – SUPPLIER REPORTS IN RESPECT OF  
PRIME VPAAS SERVICES & CHIEF VPAAS SERVICES**

| No | Report name/description                               | Frequency                                  | Format                                                     | Comments                                                                                                                                                                                        |
|----|-------------------------------------------------------|--------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <b>Contract Management Reports</b>                    |                                            |                                                            |                                                                                                                                                                                                 |
| 1. | Client Executive Report                               | Monthly                                    | Narrative / Spreadsheet                                    | Giving highlights and lowlights for VPaaS Services and any Projects; "RAG" (Red, Amber Green) markings against business activities, projects and feasibility studies.                           |
| 2. | Client Executive Report to joint partnership meetings | Monthly                                    | Narrative / Spreadsheet                                    | Giving high level MIS to the senior management of the partnership, focussing on VPaaS issues and risks against business streams, Projects, feasibility and operational services status reports. |
| 3. | Partnership Goals                                     | Quarterly                                  | Narrative                                                  | Both Parties to reflect on the requirements set out in Schedule 8 ( <b>Governance</b> ).                                                                                                        |
| 4. | Financial Remedies / Service Credits                  | Quarterly & Monthly                        | Spreadsheet                                                | Supports the requirements of Schedule 4 ( <b>Service Measurement</b> ).                                                                                                                         |
| 5. | Contract Management Issues                            | Monthly                                    | Written report / Narrative                                 | Both Parties to maintain logs and report to the other on new and continuing issues from inception to resolution, showing escalation as appropriate.                                             |
| 6. | CCNs                                                  | Monthly at the Contract Management Meeting | Spreadsheet with joint updates as to position and pipeline | Monthly joint review of signed Changes and changes requested and pending - track the cumulative status of all CCNs.                                                                             |
| 7. | Customer Provided Accommodation Report                | Quarterly                                  | Word/Excel                                                 | The Supplier's report on changes to the Supplier Accommodation Headcount and proposed changes to Customer Provided Accommodation.                                                               |

| No                     | Report name/description                 | Frequency                | Format                | Comments                                                                                                                                                                                                                                                                                                                                                |
|------------------------|-----------------------------------------|--------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8.                     | Supply Chain Report                     | Annually                 | Template at Annex 9-2 | The Supplier reports on: <ol style="list-style-type: none"> <li>1. the total contract revenue received directly on a specific contract;</li> <li>2. the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and</li> <li>3. the total value of sub-contracted revenues to SMEs and VCSEs.</li> </ol> |
| 9.                     | Subcontractors                          | Annually or upon request | Excel                 | An up to date list of all Subcontractors that it uses to provide the VPaaS Services. The list shall include the full details of each Subcontractor and the associated part of the VPaaS Services that the Supplier has engaged them to provide.                                                                                                         |
| <b>Assets</b>          |                                         |                          |                       |                                                                                                                                                                                                                                                                                                                                                         |
| 10.                    | Asset Register (Equipment and Software) | Quarterly                | Spreadsheet           | Reports all Assets used by the Supplier to provide the VPaaS Services.                                                                                                                                                                                                                                                                                  |
| 11.                    | Disposals Register                      | Quarterly                | Excel/Word            | Details planned disposal of Assets owned by the Supplier and used to provide the VPaaS Services for the Customer.                                                                                                                                                                                                                                       |
| 12.                    | Third Party Software                    | Quarterly - mutual       | Excel/Word            | Details all Third Party Software purchased/licensed and used by the Customer and Supplier to provide, receive or enjoy the VPaaS Services during the Term.                                                                                                                                                                                              |
| 13.                    | Supplier Proprietary Software           | Quarterly                | Excel/Word            | Details all Software (other than Software used in the provision of the VPaaS Services) owned by the Supplier and/or developed and owned by the Supplier and used to provide the Services for the Customer during the Term.                                                                                                                              |
| <b>Finance Reports</b> |                                         |                          |                       |                                                                                                                                                                                                                                                                                                                                                         |

| No  | Report name/description                            | Frequency  | Format                                 | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----|----------------------------------------------------|------------|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14. | Workload Summary Report for Project Based Services | On request | Excel/Word                             | Details on the manpower cost by Modernisation Services Projects.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 15. | Charges and Charging Report                        | Monthly    | Excel/Word                             | Details on the Charges (actual and where relevant forecast) for VPaaS Services by month and year to date. Validates the requirements of Schedule 5 ( <b>Charges</b> ) and Schedule 6 ( <b>Invoicing</b> ).                                                                                                                                                                                                                                                                                                                                                                        |
| 16. | Billing Schedule                                   | Annual     | Excel/Word                             | List of all invoices detailing invoice number, date and each line entry.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|     | <b>Security Reports</b>                            |            |                                        | <b>Note:</b> The Reports under this "Security Reports" heading are Reports required in relation to the Intruder Detection Service (IDS) and the Anti-Virus Service (AVS).                                                                                                                                                                                                                                                                                                                                                                                                         |
| 17. | Security Overview                                  | Annual     | Verbal at appropriate governance forum | <p>Provides assurance that the Supplier (and any Subcontractors) are implementing both Government and Customer security policy in accordance with Schedule 12 (<b>Security</b>).</p> <p>Indicates how effective the Supplier is in implementing both Government and Customer security policy in accordance with Schedule 12 (<b>Security</b>). The update will consist of the information from the following security assurance reports produced during the Contract Year. In addition, details will be provided showing how Customer security standards have been addressed.</p> |

| No  | Report name/description | Frequency   | Format                                                         | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|-------------------------|-------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 18. | Personnel Security      | Bi-annually | Verbal at appropriate governance forum<br>Process descriptions | <p>The update will confirm that:</p> <ol style="list-style-type: none"> <li>all successful applicants offered employment with the Supplier undertaking Customer work have met all the Basic Check criteria before taking up duty;</li> <li>all employees have signed the appropriate statutory undertaking not to disclose Customer information with reminders of their obligations every six (6) months. Any breaches of the undertakings and the disciplinary action taken should be included;</li> <li>the appropriate levels of vetting for those individuals who are employed in posts handling information protectively marked "SECRET" or higher are completed prior to staff taking up duty;</li> <li>personnel records have been maintained and that the correct processes have been completed;</li> <li>the number of posts of non-UK nationals who have taken up duty during the last twelve (12) months; and</li> <li>the implementation of any departmental requests not to use specified individuals on Customer business.</li> </ol> <p>All of the above for all agents and Subcontractors.</p> |
| 19. | Physical Security       | Bi-annually | Verbal at appropriate governance forum                         | <ol style="list-style-type: none"> <li>The update will confirm that all agreed physical security measures are in place and functioning normally;</li> <li>It will address any issues open at the time of the previous update and any new requirements or deficiencies identified since that update was provided; and</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| No  | Report name/description        | Frequency | Format                                 | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|--------------------------------|-----------|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                |           |                                        | <p>3. If there are, or have been, any problems related to the physical security measures, these should also be updated in this update.</p> <p>For each of the issues identified above, an explanation of the present status will be given. This will include progress reports, details of any obstacles current and overcome, and any changes that might have a bearing on the Customer's view as to the security of the facility.</p>                                                         |
| 20. | Business Continuity management | Quarterly | Verbal at appropriate governance forum | <p>1. The update will list all business continuity plans and evidence of the business impact review and business recovery strategy for each plan; and</p> <p>2. The update will provide details of the testing programme.</p> <p>3. The update will also detail how recommendations from the testing will be implemented and when amendments to the plan will be made.</p>                                                                                                                     |
| 21. | IT Development and Operation   | Quarterly | Verbal at appropriate governance forum | <p>1. Security Accreditation</p> <p>The update will detail how the Supplier carries out Security Accreditation and provide an assurance that accreditation takes place before any Project is introduced into live service. It will also list all of the business services, frameworks and other Projects in scope of VPaaS Services are being developed and provide details of how Security Accreditation is to be achieved;</p> <p>2. Offshore Development</p> <p>The update will provide</p> |

| No | Report name/description | Frequency | Format | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----|-------------------------|-----------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                         |           |        | <p>details of any Software development being undertaken outside the United Kingdom with confirmation that the development excludes security and anti-fraud functions;</p> <p>3. Remote System Support</p> <p>The update will provide details of any remote system support from suppliers being undertaken either inside or outside the United Kingdom with confirmation that the Customer's security standards are being applied and that access is only provided to diagnostic information;</p> <p>4. Data Processing</p> <p>The update will confirm that Personal Data is not processed outside the United Kingdom nor accessed for processing outside the United Kingdom; and</p> <p>5. Data Custodian</p> <p>The update will detail:</p> <ol style="list-style-type: none"> <li>1. how the Supplier is providing the level of protection specified in the user requirement to ensure that the activities of the licensee are limited by access control Software which implements the conditions specified in the data usage licence; and</li> <li>2. how the conditions of access to data specified in the ITSLAs</li> </ol> |

| No  | Report name/description             | Frequency | Format                                 | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----|-------------------------------------|-----------|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                     |           |                                        | for the IT component or data store are adhered to; the security rules and conditions that are applied to the processing and storage of electronic information, and how the Customer's security policies and standards are being achieved.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 22. | Handling of National Cryptomaterial | Quarterly | Verbal at appropriate governance forum | <p>The update will confirm that:</p> <ol style="list-style-type: none"> <li>1. access to any cryptomaterial is restricted to a minimum number of suitably qualified and appropriately vetted personnel;</li> <li>2. all staff with access to cryptomaterial have a thorough understanding of its value, the need to protect it and are conversant with the correct handling and operating procedures;</li> <li>3. arrangements exist for the secure conveyance, storage and operation in accordance with these instructions;</li> <li>4. the requisite procedures are implemented to account for cryptomaterial and deal with security violations; and</li> <li>5. periodic inspections are carried out to confirm that the minimum standards are being correctly applied.</li> </ol> |
| 23. | Special Contract Provisions         | Quarterly | Verbal at appropriate governance forum | <p>IT Health Checks relevant to VPaaS Services and Modernisation Projects:</p> <ol style="list-style-type: none"> <li>1. The update will detail all the recommendations produced as part of an external health check and provide detailed comments on how the recommendations are being managed.</li> <li>2. Detailed comments will be required to show how the recommendations are</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                        |



| No  | Report name/description                                                                                                                                                                                       | Frequency             | Format                  | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                                                                                                                                               |                       |                         | <p>implemented. Detailed comments are required to show whether the recommendations are appropriate to other parts of the infrastructure, which were not part of the original health check. Progress on their implementation will be required.</p> <p>Protection of Secure and Sensitive records:</p> <ol style="list-style-type: none"> <li>1. The update will detail and confirm the correct operation of the security measures, processes and procedures specified in the Security Policies and Security Operating Procedures for systems handling information protectively marked "SECRET" or higher. Includes specific comments on Personal Security, Physical Security and the Line Management processes; progress on any issues from the previous update and comment on any incidents that have occurred during the quarter.</li> </ol> |
|     | <b>Systems and Services</b><br><br><b>(Note: Schedule 2 (Services) describes the systems and services whilst Schedule 4 (Service Measurement) defines the Service Levels for those systems and services.)</b> |                       |                         | <b>Note:</b> The Reports below under this "Systems and Services" heading are indicative of the Reports required for each of the systems and services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 24. | Performance Monitoring Reports                                                                                                                                                                                | Weekly or monthly     | Narrative               | Frequency depends on which service is being reported upon.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 25. | Service availability Reports                                                                                                                                                                                  | Weekly and/or Monthly | Narrative / Spreadsheet | <p>Frequency depends upon which service is being reported upon.</p> <p>Details of service availability against agreed levels.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

| No  | Report name/description                                                      | Frequency         | Format          | Comments                                                                                                                                                        |
|-----|------------------------------------------------------------------------------|-------------------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 26. | Problem Management Reports                                                   | Weekly or Monthly | Table           | Frequency depends on which service includes reports against fault fix Service Levels, incorrect closures and trend Reports.                                     |
| 27. | Root Cause Analysis Reports                                                  | Ad hoc            | Narrative       | As required, when problem requiring root cause analysis arises.                                                                                                 |
| 28. | Incident Reports                                                             | Ad hoc            | Narrative       | As required after major service delivery incident.                                                                                                              |
| 29. | Malicious Software Detection Report                                          | Monthly           | Email           | Malicious Software types and quantities detected.                                                                                                               |
| 30. | Operational Daily Report                                                     | Daily             | Table           | Report of previous twenty-four (24) hours service delivery aspects.                                                                                             |
| 31. | Service Availability Schedules                                               | At least monthly  | Spreadsheet     | For all live systems – a forecast of service availability for the next twelve (12) months.                                                                      |
| 32. | Roadmap                                                                      | On request        | Table           | For the Services – a roadmap of activity for the next twelve (12) months.                                                                                       |
| 33. | Daily Report                                                                 | Daily             | Narrative       | For Senior Management, a RAG (Red, Amber, Green) status report of any VPaaS elements of the live systems over the last Working Day.                             |
| 34. | <b>Redacted</b>                                                              | <b>Redacted</b>   | <b>Redacted</b> | <b>Redacted</b>                                                                                                                                                 |
| 35. | Progress Report on VPaaS Environment Refresh                                 | Quarterly         | Excel/Word      | Details the progress of the VPaaS Environment Refresh activity.                                                                                                 |
| 36. | Monthly GPLI usage (and if requested the Declaration to GPLI ratio)          | Monthly           | Excel/Word      | Details the monthly GPLI usage for each applicable Prime VPaaS Application.                                                                                     |
| 37. | Monthly storage usage                                                        | Monthly           | Excel/Word      | Details the monthly storage used for each applicable Prime VPaaS Application.                                                                                   |
| 38. | Number of concurrent Customer HostTalk end user connections for the Services | Monthly           | Excel/Word      | Details of the actual number of concurrent Customer end user connections for the VPaaS Services in the month. Limit to service where concurrent users measured. |

| No  | Report name/description             | Frequency                     | Format | Comments                                                                                                                                                                                               |
|-----|-------------------------------------|-------------------------------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | <b>TECHNICAL INFRASTRUCTURE</b>     |                               |        |                                                                                                                                                                                                        |
| 39. | Technical Infrastructure deployment | Quarterly                     | Excel  | An extract from the Suppliers asset database (FAD) detailing the Technical Infrastructure deployed on the estate, versions (where applicable) and known end of support/end of life dates (ASUD)        |
| 40. | Service Offerings Roadmap           | On request                    | Excel  | Details of future Supplier service offerings and technologies together with their associated features and availability dates.                                                                          |
| 41. | Supplier Technologies               | On request                    | Excel  | Supplier's roadmap for Supplier owned tools and Assets which are not detailed in the FAD (i.e. EM toolsets).                                                                                           |
| 42. | Key Supplier Positions              | at least every six (6) months | Word   | Sets out the status of all Key Supplier Positions (including providing an update of the table in Part I of Annex 14-1) and any other issues that have or are anticipated to affect Supplier Personnel. |

**PART B – MODERNISATION SERVICES REPORTS**

Any or all of the following reports may be required:

[Parties to agree specific reports in the applicable Supplier Proposal. Parties may also agree generic Modernisation Services Reports and include them here.]

**PART C – APPLICATION SERVICES REPORTS**

Any or all of the following reports may be required:

[Parties to agree specific reports when Application Services are agreed pursuant to the Change Control Procedure.]

**ANNEX 9-2**  
**SUPPLIER SUPPLY CHAIN REPORT**

|                                                                            | Financial Year 20[ ] |   |                     |   |
|----------------------------------------------------------------------------|----------------------|---|---------------------|---|
|                                                                            | Under this Agreement |   | Supplier as a whole |   |
|                                                                            | £                    | % | £                   | % |
| Estimated total contract revenue (£) to be received in this Financial Year |                      |   |                     |   |
| Total value of Subcontract revenues (£) in this Financial Year             |                      |   |                     |   |
| Total value of Subcontract revenues to SMEs (£) in this Financial Year     |                      |   |                     |   |
| Total value of Subcontract revenues to VCSEs (£) in this Financial Year    |                      |   |                     |   |

## ANNEX 9-3

**CUSTOMER REPORTS TO THE SUPPLIER IN RESPECT OF  
PRIME VPaaS SERVICES & PRIME VPaaS SERVICES**

| No | Customer Report name/description    | Frequency                                                                           | Format                                                                 | Comments                                                                                                                                                                                                                                                                                                                                            |
|----|-------------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | CHIEF IES System Performance        | As required to enable the Supplier itself to report on CHIEF IES System performance | Written with data - As required to enable efficient Supplier reporting | For CHIEF VPaaS Service Level reporting most if not all of the recording and reporting is done by the Customer. The Supplier needs to receive performance report information from the Customer from its systems to enable the Supplier in turn to report in respect of its performance of the relevant VPaaS Services.                              |
| 2. | CHIEF Requirement Forecasting       | Monthly report with rolling Quarterly accuracy                                      | Written rolling report Forecasting                                     | The Customer has confirmed that requirements for CHIEF can be variable and are expected to grow considerably. This is a monthly report confirming anticipated growth requirements and forecasting for a minimum of 12 months to accommodate seasonal peaks with longer projections if possible and firm forecasting for the immediate next Quarter. |
| 3. | Prime VPaaS Application Performance | On request                                                                          | Written updates                                                        | Such performance information in respect of the Customer's Prime VPaaS Applications as is reasonably required to enable the Supplier to comply with its reporting obligations.                                                                                                                                                                       |
| 4. | Customer Appendix A Report          | Monthly until 6-months prior to expected completion of each element – then weekly   | Written updates in the format agreed between the Parties               | The activities and progress of the Customer in performing its obligations and tasks required in Accordance with Appendix A to Schedule 2 ( <b>Services</b> ) against VPaaS Refresh Deadlines.                                                                                                                                                       |
| 5. | Customer Appendix C Report          | Monthly until 6-months prior to expected completion of each element – then weekly   | Written updates in the format agreed between the Parties               | The activities and progress of the Customer in performing its obligations and tasks required in Accordance with Schedule 2 Appendix C.                                                                                                                                                                                                              |
| 6. | Modernisation Plans                 | Quarterly                                                                           | Oral – update given at the Strategic Leadership                        | The progress and timing of the Customer's various activities to modernise and replace some or all of the functionality                                                                                                                                                                                                                              |

| No     | Customer Report name/description | Frequency                     | Format                                                                            | Comments                                                                                                                                                                                                                                                                                                                                                                                           |
|--------|----------------------------------|-------------------------------|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        |                                  |                               | Meetings and recorded in minutes                                                  | performed by the VME Applications.                                                                                                                                                                                                                                                                                                                                                                 |
| 7.     | CESA, VAT and Prime Development  | Monthly ad hoc                | Oral – update given at the Strategic Leadership and recorded in minutes           | Developments, enhancements, changes and releases planned for the VME Applications and their operation.                                                                                                                                                                                                                                                                                             |
| 8.     | CHIEF Development                | Monthly ad hoc                | Oral – update given at the Strategic Leadership Meetings and recorded in minutes. | Developments, enhancements, changes and releases planned for the CHIEF Application (and if relevant CDS) and its operation. The Supplier needs to understand the Customer's changing business needs in respect of import/export matters and any development and transition of the use of the CHIEF Application and its required performance and sizing against evolving import and export changes. |
| 9.     | Services Recipients              | Annually and upon request     | Excel listings or updated Schedule                                                | An up to date list of all Services Recipients that enjoy benefit of the VPaaS Services. The list shall include the full details of each Services Recipient and the associated part of the Services that the Services Recipient is to enjoy.                                                                                                                                                        |
| 10. 10 | <b>Redacted</b>                  | <b>Redacted</b>               | <b>Redacted</b>                                                                   | <b>Redacted</b>                                                                                                                                                                                                                                                                                                                                                                                    |
| 11.    | Key Customer Positions           | at least every six (6) months | Word                                                                              | Sets out the status of all Key Customer Positions (including providing an update of the table in Part Ii of Annex 14-1) and any other issues that have or are anticipated to affect Customer's personnel.                                                                                                                                                                                          |



**SCHEDULE 10**  
**AUDIT ACCESS**

**SCHEDULE 10****AUDIT ACCESS****1 INTRODUCTION**

- 1.1 This Schedule describes the record keeping requirements and audit access rights of the Customer in relation to the Supplier (and all Subcontractors). It also details the statutory requirements of the NAO.
- 1.2 Wherever in this Schedule, the Customer is specified as having a right, the Customer may choose to exercise such right through a Customer Audit Representative, in which event the Customer shall procure that such Customer Audit Representative shall sign a confidentiality agreement in a form agreed by the Customer and the Supplier (each acting reasonably).

**2 OVERVIEW**

- 2.1 The IAO is responsible for providing independent assurance across all areas of the Customer's business. An annual risk-based programme is agreed with the Customer's Audit Committee, to provide the Customer's Chief Executive and the Board with an overall opinion of its exposure to risk, governance and the effectiveness of its systems of internal control.
- 2.2 The Departmental IT Security Officer sets the security policy and standards for the Customer, and provides an opinion to the Customer's Chief Executive and the Board on their exposure to security risk. The Customer's security requirements are set out in Schedule 12 (**Security**).
- 2.3 There may also be occasional instances where an audit team is drawn from other specialist areas within the Customer where this is merited by the nature of the subject of the review.
- 2.4 The NAO has a statutory right of access under the National Audit Act 1983 (and other relevant legislation as detailed in this Schedule) to examine and certify the accounts of the Customer and to examine the economy, efficiency and effectiveness with which the Customer has used its resources. The Comptroller and Auditor General also has responsibilities under Section 2 of the Exchequer and Audit Act 1921 which require access to information.

**3 MAINTENANCE AND RETENTION OF RECORDS**

- 3.1 The Supplier shall keep (in an orderly, auditable and assessable manner) full and accurate Records, in a form agreed by the Parties, until the later of:
- (a) seven (7) years after the date of creation of the relevant Record; and
  - (b) the date that all pending matters relating to the subject-matter of each Record (including disputes) are closed,
- unless an alternative retention period has been agreed with the Customer.

- 3.2 The Supplier shall ensure that all Subcontractors (and any other representatives engaged by it) keep full and accurate Records relevant to the provision of products and services provided by such Subcontractors pursuant to this Agreement. The retention period for such Records shall be the same as that described in Section 3.1 above.
- 3.3 Without limitation to Section 3.1 above, the Supplier shall maintain complete, accurate and valid records of, and supporting documentation for, invoices submitted to the Customer and the payments made by the Customer under this Agreement. Such other accounting principles shall be implemented in accordance with Clause 26.3(a) of the Terms and Conditions where the same are applied by the Supplier to its customers generally. Where the Customer requires the Supplier to adopt a specific accounting principle that the Supplier does not apply (and is not required by Law to apply) with respect to its other customers, such requirement shall be addressed in accordance with the Change Control Procedure.
- 3.4 Before destroying or otherwise disposing of any Records, the Supplier shall:
- (a) provide the Customer with sixty (60) days' prior written notice of the intent to destroy or dispose of such Records;
  - (b) offer the Customer the opportunity to recover such information and allow the Customer to take any of the following options:
    - (i) to require the Supplier to retain such Records for longer than the previously agreed retention period;
    - (ii) to request the Supplier to deliver such Records to the Customer; and
    - (iii) to allow the Supplier to destroy or dispose of such Records; and
  - (c) notify the Customer of the costs of the options described in Sections 3.4.2(a) and 3.4.2(b) above.
- 3.5 If the Customer selects any of options described in Sections 3.4.2(a) and 3.4.2(b) above then the Customer shall pay the costs (if any) of the option selected provided that the Supplier shall not charge the Customer its costs in the event that the Customer selects the option referred to in Section 3.4.2(c) above.

#### **4 AUDIT ACCESS RIGHTS**

- 4.1 The Supplier shall, and subject to Section 4.5 below shall ensure that a relevant Subcontractor shall, grant the Customer access at all reasonable times, subject to the provisions of Sections 4.8 and 4.9 below, to any Facility or part of a Facility (including the Supplier's Facilities and/or any facilities of a relevant Subcontractor) at which the Supplier or any relevant Subcontractor is providing the Services, and shall grant to the Customer reasonable access to the Supplier Personnel and to Records (including any personnel or records of a relevant Subcontractor) relating to the Services and (including Records relating to complaints received from HMRC Customers), and the right to copy such Records for the purpose of performing audits of the Supplier and any relevant Subcontractor in order to:

- (a) conduct the Customer's internal and statutory audits, including preparing the Customer's annual and interim reports;
  - (b) verify the accuracy of the calculation of the Service Charges and/or any other amounts payable by the Customer under the Agreement and invoices;
  - (c) verify the accuracy of Pass-Through Expenses payable by the Customer;
  - (d) verify the Supplier's and its relevant Subcontractors' provision of the Services and compliance with the terms of the Agreement, to the extent applicable to the Services and the relevant Service Charges, by performing audits of:
    - (i) practices and procedures;
    - (ii) systems;
    - (iii) general controls and security practices and procedures, including business continuity and disaster recovery plans;
    - (iv) disaster recovery and back-up procedures;
    - (v) the use of any Equipment, Customer Software or Customer Third Party Software used by or on behalf of the Supplier or any relevant Subcontractor;
    - (vi) Service Levels and supporting information and calculations, including the measurement and monitoring tools and procedures specified in Schedule 4 (**Service Measurement**); and
    - (vii) such other audits as may be necessary to enable the Customer to fulfil, or to confirm that the Supplier is fulfilling, the requirements of all applicable Laws;
  - (e) inspect any Customer Assets in the Supplier's or any relevant Subcontractors' possession or control (including Customer Data, HMRC Customer Data, or any equipment or Customer Accommodation) for the purposes of ensuring that the Customer Assets are protected in accordance with Schedule 12 (**Security**);
  - (f) verify the integrity, confidentiality and security of Customer Data and/or HMRC Customer Data, including inspecting the Technical Infrastructure (or any parts thereof) and any other systems that Process, store, support and transmit Customer Data and/or HMRC Customer Data; and
  - (g) identify suspected fraud or material accounting mistakes, provided that the Customer will be under no obligation to inform the Supplier of the objective of such an audit where to do so is reasonably considered by the Customer to be prejudicial to the purpose of such audit.
- 4.2 All audits carried out pursuant to this Schedule shall be conducted in a reasonable and professional manner and with minimum disruption to the Supplier's ability to perform its obligations under this Agreement or its obligations in respect of any of its other customers (insofar as may be possible for such audit work).

- 4.3 Where the Customer has informed the Supplier in advance of the purpose and scope of an audit to be carried out by the Customer pursuant to this Schedule, the Supplier shall, and shall procure that, where applicable, the relevant Subcontractors shall, notify the Customer in writing, in advance of any matter or course of action of which it or they are aware and which, in its or their reasonable opinion, would be likely to affect the manner in which such audit is carried out and/or the impact that such audit would have on the Supplier's ability to perform its obligations under this Agreement and/or any relevant Subcontractors ability to perform its obligations under any Subcontract or its obligations in respect of any of its other customers.
- 4.4 Any loss or damage caused to the Supplier and/or the relevant Subcontractors by the Customer or the NAO exercising any of its rights under this Schedule shall be treated as a deemed Relief Event and the Supplier shall be entitled to recover Relief Event Compensation in accordance with 16.1(f)(iv) of the Terms and Conditions, provided that the Supplier and/or the relevant Subcontractors have complied with the provisions of Section 4.3 above. The Customer shall, and shall procure that Customer Audit Representatives shall, comply with such security and related policies and procedures that apply to any of the Supplier's Facilities to which the Supplier has granted access for the purpose of an audit under this Schedule as the Supplier may have notified to the Customer and/or Customer Audit Representatives in advance.
- 4.5 All references in this Section 4 to audits by the Customer or the Customer Audit Representative of a Subcontractor shall be subject to the following provisions:
- (a) subject to Section 4.5(c) below, in respect of all Subcontractors with whom the Supplier has entered into a subcontract agreement prior to the Effective Date, the Customer shall benefit from such rights of audit that the Supplier has been able to procure from the Subcontractors on behalf of Customer as at the Effective Date. The Parties acknowledge that such rights of audit may not be similar to or extend to the rights of audit as are granted, allowed and / or accepted by the Supplier under this Schedule;
  - (b) subject to Section 4.5(c) below, in respect of each new Subcontractor with whom the Supplier enters into a subcontract agreement from the Effective Date, the Supplier shall procure that such Subcontractor grants and allows, where appropriate, similar rights of access and accepts, where appropriate, similar obligations to provide information as are granted, allowed and / or accepted by the Supplier under this Schedule; and
  - (c) in respect of all Subcontractors (and whether existing prior to or after the Effective Date), the rights of audit granted to the Customer under this Schedule shall not extend to any Subcontractor that meets any one of the following tests:
    - (i) whose service provision does not form a material part of the Services;
    - (ii) whose service provision will be provided pursuant to a framework agreement between the Supplier (or any other Supplier Group Company) and the relevant Subcontractor (or any Affiliate of such Subcontractor);
    - (iii) whose service provision constitutes commercially available, off the shelf information technology or business process services; or

- (iv) that does not involve employees of such Subcontractor having access to Customer Confidential Information, the IT Estate or Customer Data.
- 4.6 The Supplier shall provide all reasonable assistance to the Customer and the NAO at all times during the Term (and for the period described in Section 9 below) to enable the Customer and the NAO to exercise their rights in accordance with this Schedule. For the avoidance of doubt, the Supplier shall, and shall procure that any relevant Subcontractor shall, co-operate with Customer Audit Representatives and/or representatives of the NAO and provide such reasonable assistance as they require (including, where appropriate, installing and operating audit software in accordance with the agreed procedures) in carrying out the audits. The Customer and the NAO shall be entitled to discuss any matter arising pursuant to the exercise of their rights under this Schedule with any relevant Supplier Personnel as the Customer or the NAO may reasonably require.
- 4.7 The Customer will provide at least ten (10) Working Days' notice of any audit of a routine nature that it intends to carry out.
- 4.8 The Supplier shall grant immediate access for investigative audits or security testing in the following circumstances:
  - (a) such audit is reasonably required by the Customer on the basis that the Customer has reasonable grounds to suspect fraud or other impropriety which is similar in nature to fraud by the Supplier, any of the Subcontractors or any of the Supplier Personnel;
  - (b) the Customer has reasonable grounds to suspect that the Supplier may be in material breach of its obligations under this Agreement;
  - (c) the Customer has reasonable grounds to suspect that a significant security breach has occurred;
  - (d) the Customer may carry out occasional unannounced security testing to establish compliance with Schedule 12 (**Security**); or
  - (e) other circumstances have arisen, or are believed to have arisen, which would give the Customer the right to terminate the Agreement for Material Default or Prohibited Act.
- 4.9 In the event of an investigation, in accordance with Section 4.8(a) above, into suspected fraudulent activity or other impropriety by the Supplier, any of the Subcontractors or any of the Supplier Personnel in connection with the Agreement, the Customer reserves for itself and its authorised agents the right of immediate and reasonable access to the Supplier's Records and/or any Supplier Personnel, including any records and/or personnel of any relevant Subcontractor. The Supplier agrees to render all necessary and reasonable assistance to the conduct of such investigation at all times during the Term or at any time thereafter.
- 4.10 The Supplier shall further grant immediate access to HMRC Customer Data and Customer Data where such access is reasonably required by the Customer on the basis that the Customer has reasonable grounds to suspect fraud or other impropriety which is similar in nature to fraud by any Customer personnel or any third party to whom

Section 4.8(a) above does not apply, provided that this right of access shall be limited as described in Section 4.11 below.

- 4.11 In the event of an investigation, in accordance with Section 4.10 above, into suspected fraudulent activity or other impropriety which is similar in nature to fraud by any Customer personnel or any third party in connection with the Agreement, the Customer reserves for itself and its authorised agents the right of immediate and reasonable access to such HMRC Customer Data and Customer Data as would be relevant to the investigation of such fraud. Such investigation shall not extend to the wider rights of audit set out in this Schedule. The Supplier agrees to render all necessary and reasonable assistance to the conduct of such investigation at all times during the Term or at any time thereafter.

## 5 SUPPLIER AUDIT AND LIAISON

- 5.1 The Supplier shall conduct internal reviews and audits of, or pertaining to, its provision of the Services in a manner consistent with Good Industry Practice.

- 5.2 The Supplier shall:

- (a) inform the Customer of the identities of its internal representatives that have responsibility for audit and security (or that have equivalent review capabilities);
- (b) provide reasonable details to the Customer of the Supplier's own audit and security programmes relevant to the provision of the Services; and
- (c) ensure that its representatives liaise with the Customer regarding the potential for joint working, where practicable, and the development of the necessary procedures to support this aim,

in accordance with any agreed audit memorandum of understanding applicable to the Services ("**Audit Memorandum of Understanding**").

- 5.3 The Supplier shall notify the Customer as soon as practicable where any audit is carried out by it or on its behalf which directly relates to any aspect of service provision pertinent to this Agreement.

- 5.4 In accordance with the Audit Memorandum of Understanding, the Supplier shall promptly make available to the Customer the results of any review or audit conducted by itself (excluding audits conducted by the Supplier Group's group audit function) or by the Subcontractors relating to the Services and any finding or report concerning actual or suspected errors with respect to the Services and/or any amounts charged to the Customer hereunder.

## 6 COMPTROLLER AND AUDITOR GENERAL AND THE NAO

- 6.1 For the purposes of:

- (a) the examination and certification of the accounts of the Customer, which includes, for the avoidance of doubt, purposes associated with Section 2 of the Exchequer and Audit Act 1921, the National Audit Act 1983, and the

Government Resources and Accounts Act 2000 and any other similar legislation that may come into force; and/or

- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources,

the Comptroller and Auditor General and/or his representatives ("**C&AG**") shall have the right to examine the Supplier's Records and all such documents and other information owned, maintained or held by, or otherwise in the control of the Supplier as the C&AG may reasonably require or reasonably consider necessary. The Supplier shall provide access (and shall procure that any person acting on the Supplier's behalf who has such Supplier's Records, documents and/or other information shall also provide access) to such Supplier's Records, documents and/or other information for C&AG for such purposes. Further, the Supplier shall furnish to the C&AG such oral or written explanations as he reasonably requires for such purposes on the same terms that the Supplier is required to provide access and assistance to the Customer as set out in this Schedule. The Supplier will not be liable for the C&AG's own costs of such examination and clarification.

- 6.2 For the avoidance of doubt, it is hereby declared that Section 6.1 above does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier by the C&AG under Section 6(3)(d) of the National Audit Act 1983.

## **7 PAYMENT FOR AUDIT ACTIVITY**

- 7.1 Except where specifically provided in this Schedule, neither the Supplier, Subcontractors nor other representatives of the Supplier shall be entitled to reimbursement by the Customer or the NAO for any costs or expenses incurred as a result of compliance with the Supplier's obligations hereunder.
- 7.2 During the period described in Section 9 below, the Supplier shall provide assistance with audits conducted by the Customer pursuant to this Schedule (excluding audits conducted pursuant to Sections 4.8(a), 4.8(b), 4.8(c), 4.8(e) or 4.9 above) which shall be paid for as Rate Based Services.
- 7.3 The Supplier shall not bear the Customer's or the NAO's own costs of undertaking activities contemplated or required pursuant to this Schedule.
- 7.4 The Supplier shall be paid any reasonable expenses incurred in giving any such reasonable assistance for the circumstances set out in Sections 4.8(a), 4.8(b), 4.8(c), 4.8(e) or 4.9 above only where the fraud, impropriety of a similar nature to fraud, material breach or security breach is not by any of the Supplier Personnel, unless that fraud or breach should reasonably have been expected to have been prevented by the Supplier or a Subcontractor. The Supplier shall further be paid for the Man-days of assistance with audits conducted by the Customer pursuant to Section 4.9 above as Rate Based Services where the fraud or impropriety which is similar in nature to fraud is not by any of the Supplier Personnel, unless that fraud or impropriety which is similar in nature to fraud should reasonably have been expected to have been prevented by the Supplier or a Subcontractor.



## **8 AUDIT OF PASS-THROUGH EXPENSES**

- 8.1 The Supplier shall ensure that any arrangements that it enters into with third parties, and which are to be paid by the Customer as Pass-Through Expenses, provide the right for the Customer to audit the charges and invoicing in respect of such Pass-Through Expenses.

## **9 DURATION OF RIGHTS**

- 9.1 Subject to Section 4.11, the Customer and the NAO may exercise any of their rights set out in this Schedule for a period of twenty-four (24) months following the end of the Term.

## **10 AUDIT REPORTING AND FOLLOW-UP**

- 10.1 Following an audit conducted pursuant to this Schedule, the Customer will conduct review meetings with the Supplier to determine what, if any, actions will be taken in response to any issues arising out of such audit that pertain to the Supplier.
- 10.2 The Supplier and the Customer (together with the NAO) shall develop, agree and thereafter follow procedures for the sharing of reports for audits carried out pursuant to the Audit Memorandum of Understanding.
- 10.3 The Supplier shall provide updates to the Customer on the implementation of any actions from undisputed recommendations made in audit reports and any recommendations made in audit reports that are disputed by the Supplier but resolved in the Customer's favour under the Escalation Process, in each case in line with the procedures in the Audit Memorandum of Understanding.
- 10.4 If any audit reveals any error or incorrect charging in any Supplier invoice, an appropriate correcting payment or credit shall be promptly made by the Supplier in accordance with Schedule 6 (**Invoicing**).

## **11 ESCALATION PROCESS**

- 11.1 In the event that an issue arising out of an audit conducted pursuant to this Schedule cannot be resolved at an operational level, the resolution of that issue will be progressed under the Escalation Process.

**SCHEDULE 11**  
**FINANCIAL DISTRESS**

## 1 **DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

|                                                   |                                                                                                                                                                                                                             |
|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Accounting Reference Dates"</b>               | means the dates to which the Supplier prepares its audited financial statements;                                                                                                                                            |
| <b>"Board"</b>                                    | means the Supplier's board of directors;                                                                                                                                                                                    |
| <b>"Board Confirmation"</b>                       | means written confirmation from the Board in accordance with Section 8 of this Schedule;                                                                                                                                    |
| <b>"Financial Distress Remediation Plan"</b>      | has the meaning given in Section 4.3(b)(i) of this Schedule;                                                                                                                                                                |
| <b>"Financial Rating Distress Event Criteria"</b> | the distress criteria relating the Supplier's credit rating as set out in Annex 11-1 of this Schedule;                                                                                                                      |
| <b>"Financial Indicators"</b>                     | means each of the financial indicators set out at Section 5.1 of this Schedule;                                                                                                                                             |
| <b>"Probability of Failure Percentage"</b>        | means the percentage figure specified as the "Probability of failure over the next 12 months" within Dunn and Bradstreet's reports on the Supplier. This was previously known as the "Incidence of Failure" percentage; and |
| <b>"Rating Agencies"</b>                          | means the rating agencies listed in Annex 11-1 of this Schedule.                                                                                                                                                            |

## 2 **WARRANTIES AND DUTY TO NOTIFY**

- 2.1 The Supplier warrants and represents to the Customer for the benefit of the Customer that, as at the Effective Date, the applicable credit ratings issued for the Supplier by each of the Rating Agencies does not meet the Financial Rating Distress Event Criteria.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Customer in writing if the applicable credit rating issued by any Rating Agency for the Supplier meets the applicable Financial Rating Distress Event Criteria (and in any event within five (5) Working Days of the occurrence of the Financial Rating Distress Event Criteria being met).
- 2.3 The Supplier shall:
- (a) regularly monitor the credit ratings of the Supplier with the Rating Agencies;
  - (b) monitor and report on the Financial Indicators at least at the frequency set out at Section 5.1; and
  - (c) promptly notify (or shall procure that its auditors promptly notify) the Customer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress

Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Section 3.1(a) below, and for the purposes of determining relief under Section 7.1 below, the credit rating of the Supplier shall be deemed to have met the applicable Financial Rating Distress Event Criteria if:

- (a) the credit rating given to the Supplier by a Rating Agency meets the Financial Rating Distress Event Criteria; or
- (b) a Rating Agency that is specified as holding a credit rating for the Supplier ceases to hold a credit rating for the Supplier (except where that Rating Agency decides not to hold a credit rating for the Supplier for a reason other than financial difficulties of the Supplier (for example, were the Rating Agency ceases business or stops providing ratings for businesses within the Supplier's industry), provided that in such circumstances, the Parties shall agree a new Rating Agency as a replacement).

2.5 Each report submitted by the Supplier pursuant to Section 2.3(b) above shall:

- (a) contain a sufficient level of information to enable the Customer to verify the calculations that have been made in respect of the Financial Indicators;
- (b) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- (c) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- (d) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Customer to easily analyse and assess the trends in financial performance.

### **3 FINANCIAL DISTRESS EVENTS**

3.1 The following shall be "**Financial Distress Events**":

- (a) the credit rating of the Supplier meets the applicable Financial Rating Distress Event Criteria;
- (b) the Supplier issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier;
- (d) the Supplier committing a material breach of a covenant to its lenders;

- (e) a Subcontractor notifying the Customer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; and
- (f) any of the following:
  - (i) commencement of any litigation against the Supplier which, if successful, would have a material adverse effect on its financial standing and/or ability to perform the Services;
  - (ii) non-payment by the Supplier of any financial indebtedness;
  - (iii) any financial indebtedness of the Supplier becoming due as a result of an event of default;
  - (iv) the cancellation or suspension of any financial indebtedness in respect the Supplier; or
  - (v) the external auditor of the Supplier expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of the Supplier,

in each case which the Customer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement.

#### **4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS**

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Customer becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Customer shall have the rights and remedies as set out in Sections 4.3 to 4.5 below.
- 4.2 In the event of a late or non-payment to a Subcontractor pursuant to Section 3.1(e), the Customer shall not exercise any of its rights or remedies under Section 4.3 below without first giving the Supplier ten (10) Working Days to:
  - (a) rectify such late or non-payment; or
  - (b) demonstrate to the Customer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall:
  - (a) at the request of the Customer, meet the Customer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the services in accordance with this Agreement; and
  - (b) where the Customer reasonably believes (taking into account the discussions and any representations made under Section 4.3(a)) that the Financial Distress

Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

- (i) subject to Section 4.4 below, prepare and submit to the Customer, a plan as to how it will address the Financial Distress Event and mitigate the effects of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement (a “**Financial Distress Remediation Plan**”) as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing); and
- (ii) to the extent that it is legally permitted to do so and subject to Section 4.7 below, provide such information relating to the Supplier as the Customer may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Customer shall review the Financial Distress Remediation Plan and may provide comments on such plan to the Supplier. The Parties shall meet to discuss any comments that the Customer has and the Supplier shall use reasonable efforts to take such comments (provided they are commercially reasonable) into account and to update the Financial Distress Remediation Plan. Without prejudice to Section 6 of this Schedule, the Customer acknowledges that Financial Distress Events will have an effect on the wider corporate entity that the Supplier is part of and that the Supplier will have responsibilities to (without limitation) its corporate owners, officers and its other customers and third party relationships (including financial relationships) when responding to a Financial Distress Event; in light of this, the actions of the Supplier following a Financial Distress Event (including creating the Financial Distress Remediation Plan and the actions thereunder) shall be at the Supplier’s sole discretion.

4.5 The Supplier shall:

- (a) on a regular basis (which shall not be less than fortnightly):
  - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
  - (ii) provide a written report to the Customer setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
- (b) where updates are made to the Financial Distress Remediation Plan in accordance with Section 4.5(a) above, submit an updated Financial Distress Remediation Plan to the Customer; and

- (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.6 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Customer and the Parties may agree that the Supplier shall be relieved of its obligations under Sections 4.3 to 4.5 above (as applicable).
- 4.7 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Section 4.3(b)(ii) is available when required and on request from the Customer and within reasonable timescales. Such measures may include:
- (a) agreeing in advance with the Customer, a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Customer;
  - (b) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Customer (which may include making price sensitive information available to Customer nominated personnel through confidential arrangements, subject to their consent); and
  - (c) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

## 5 **FINANCIAL INDICATORS**

- 5.1 The Supplier will provide the Customer with a copy of its statutory annual accounts within five (5) Working Days of the statutory annual accounts being filed with Companies House, together with written calculations and commentary on the Financial Indicators including how and why they have changed since the previous year.

| <b>FINANCIAL INDICATOR</b>   | <b>DESCRIPTION</b>                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Turnover</b>              | Turnover is the net sales generated by a business.                                                                                                                                                                                                                                                                                                                       |
| <b>Net Profit Before Tax</b> | Net Profit Before Tax is the amount by which revenue from sales exceeds costs in a business before the company has to pay corporation tax.                                                                                                                                                                                                                               |
| <b>Shareholders' Funds</b>   | Shareholders' Funds is the balance sheet value of the shareholders' interest in a company. For company (as opposed to group) accounts it is simply all assets less all liabilities. For consolidated group accounts the value of minority interests should also be excluded.                                                                                             |
| <b>Gearing</b>               | Gearing is a ratio used to measure the financial leverage employed by a firm. Gearing represents the proportion of funding by lenders as compared to the funding by shareholders. It denotes the level of a firm's debt as a percentage of its equity capital. It is a fundamental analysis ratio of a firm's level of long-term debt as compared to its equity capital. |

|                      |                                                                                                                                                                                                                                                                                                       |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Current Ratio</b> | <p>The Current Ratio is a liquidity ratio that measures whether a firm has sufficient resources to meet its short-term obligations. It compares a firm's current assets to its current liabilities, and is expressed as follows:</p> <p><b>Current Ratio = Current Assets/Current Liabilities</b></p> |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

- 5.2 If the statutory accounts have not been filed at Companies House within nine (9) months of the Supplier's Accounting Reference Date the Supplier shall notify the Customer and provide an explanation as to why the Supplier has not filled its statutory annual accounts.

## **6 TERMINATION RIGHTS**

The Customer shall be entitled to terminate this Agreement under Clause 29.1(b) (**Termination by the Customer for Supplier Default or Insolvency**) if:

- (a) the Supplier fails to notify the Customer of a Financial Distress Event in accordance with Section 2.3(c);
- (b) the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) provided by the Supplier is unacceptable to the Customer (acting reasonably) and the Parties have been unable to agree a mutually acceptable Financial Distress Remediation Plan; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Section 4.5(c) above.

## **7 PRIMACY OF CREDIT RATINGS**

- 7.1 Without prejudice to the Supplier's obligations and the Customer's rights and remedies under Section 2 above, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings for the Supplier does not meet the relevant Financial Rating Distress Event Criteria, then:

- (a) the Supplier shall be relieved automatically of its obligations under Sections 4.3 to 4.5 above; and
- (b) the Customer shall not be entitled to require the Supplier to provide financial information in accordance with Section 4.3(b)(ii) above.

## **8 BOARD CONFIRMATION**

- 8.1 Subject to Section 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within fifteen (15) months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Customer in the form set out at Annex 11-2 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:



- (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
  - (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within fifteen (15) months of the Effective Date if earlier than the timescale for submission set out in Section 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Sections 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Customer (and where the Supplier is deemed to be a strategic supplier of the Customer, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

**Annex 11-1**

***Redacted***

**Annex 11-2**  
**Board Confirmation**

**Supplier Name:**

**Contract Reference Number:**

The Board of Directors acknowledge the requirements set out at Section 8 of Schedule 11 (**Financial Distress**) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair .....

Signed .....

Date .....

Director .....

Signed .....

Date .....

**SCHEDULE 12**

**SECURITY**

## SCHEDULE 12

### SECURITY

#### **1 INTRODUCTION**

- 1.1 This Schedule describes the Customer's security requirements that the Supplier is required to meet or exceed during the Term in the provision of the Services.
- 1.2 The Supplier acknowledges that it has received the Customer's security policy and security standards and the Supplier shall comply with such security policy and security standards, as amended from time to time, ("**Security Policy**") during the Term in accordance with this Schedule. The Security Policy is made up of the following policy documents:
- (a) Government Security Classifications and Asset Control Policy
  - (b) Government Security Classification – Quick Handling Guide
  - (c) Information Assurance & Risk Policy
  - (d) Governance & Compliance Policy
  - (e) Buildings, Office and Equipment Policy
  - (f) Personnel Security & Vetting Policy
  - (g) HMRC Acceptable Use Policy (AUP)
  - (h) Offshoring Policy
  - (i) Password Management and Controlled Access to Systems and Services Guidance
  - (j) SID Policy Standards Third Party Supplier Assurance
  - (k) Third Party Security Incident Guidance
  - (l) Trusted Third Party Access Policy
  - (m) Trusted Third Party Access GPG
  - (n) Vetting Guidance
  - (o) CDIO Higher Level Clearance Policy
  - (p) DTO Risk Management Policy
  - (q) DTO Risk Management Process
  - (r) General Guidance on Non-HMRC Personnel
  - (s) Guarding and CCTV Guidance

(t) Joining and Leaving Guidance

- 1.3 The Supplier shall not be responsible or liable for any non-compliance with the Security Policy, to the extent that such non-compliance is caused by the introduction of new requirements in the Security Policy, or changes to, or the removal of, prior requirements unless such non-compliance is caused by the Supplier's failure to comply with its obligations as set out in Sections 3.5 and 3.7 of this Schedule.

## **2 OVERVIEW**

- 2.1 The Supplier shall comply with and progressively implement the Security Policy pursuant to this Schedule 12.
- 2.2 The Supplier acknowledges that the key elements of the Security Policy are to:
- (a) provide appropriate protection for all Customer staff and assets and to ensure the continuity of Customer business;
  - (b) protect people, premises, property and information (in all its forms) against attack, theft, disclosure, corruption or non-availability, whether by deliberate or accidental means; and
  - (c) conform to appropriate UK Government's security policies, standards and requirements.
- 2.3 During the Term, the Supplier shall conform to and comply with the Security Policy pursuant to Section 2 of this Schedule, including achieving the Customer's security standards, as if the Supplier was the Customer.
- 2.4 The Supplier acknowledges that one of the key principles of the Security Policy is to manage risks, rather than prescribe fixed solutions. The Supplier will therefore be required to apply judgement in discharging its responsibilities and agree with the Customer what constitutes "appropriate protection". Notwithstanding the foregoing, the Customer's decision on what constitutes appropriate protection will be final.

## **3 SECURITY REQUIREMENTS**

- 3.1 The Customer sets out its security policies, standards and requirements in a set of baselined security documents. Specific security policies and objectives are underpinned with mandatory minimum standards. This will require responsible managers to apply the principles of risk management by deciding how they will meet the security objectives.
- 3.2 The detailed security requirements for the Projects and Business Applications for which the Supplier will become responsible are set out in the functional and non-functional specification documents relating to each individual Project and Business Application.
- 3.3 The legacy levels of Protective Markings that apply to specific Projects, Business Applications and Services are set out in the Security Aspects Letter. As at the Effective Date the prevailing classifications are set out in the functional and non-functional specification documents relating to each individual Project and Business Application (as above). For clarity, as at the Effective Date, the relevant levels are as set out in Annex 12-1 to this Schedule 12.

- 3.4 The Supplier shall comply with all aspects of the UK Government's security policy as well as the Security Policy (and, in the event of any conflict, the Security Policy shall prevail). This includes demonstrating conformance to:
- (a) ISO 27001/17;
  - (b) Cabinet Office Minimum Cyber Security Standard;
  - (c) Data Protection Legislation;
  - (d) HMG Cyber Essentials (Plus);
  - (e) NCSC 14 Cloud Security Principles; and
  - (f) the HMRC Cloud Security Standard,
- in the Supplier's general security standards, in the processes involved in the maintenance and operation of existing IT systems, and in the development and operation of all future IT systems.
- 3.5 Without prejudice to the Customer's rights and remedies, whether under this Agreement or in Law, in respect of any areas of security that are identified as not complying to the Security Policy, and if the Customer does not instruct the Supplier to bring such identified non-compliant areas into compliance with the Security Policy, the Parties shall record that non-compliant area as an identified exemption to the Security Policy. In respect of such recorded exemptions, the Supplier shall continue to be relieved of its security obligations relating to such non-compliant areas.
- 3.6 For the avoidance of doubt, subject to Section 2.1 above, the Supplier shall remain responsible for ensuring overall compliance with the Security Policy in accordance with this Schedule 12, except that this obligation shall not apply to the extent that any person, authorised pursuant to LSAP, who has access to or accesses the live environment fails to comply with the applicable security standards. The Customer shall be responsible for ensuring that such LSAP authorised person who has access to or accesses the live environment complies with the applicable security standards. Any dispute between the Parties about the interpretation of the applicable security standards shall be escalated for resolution in accordance with Section 6 of this Schedule.
- 3.7 The Supplier shall agree with the Customer a method for evaluating any potential Subcontractor's security processes and capabilities in line with ISO27002. The Customer (in its sole discretion) may require the Supplier to apply this process to any potential Subcontractor prior to appointing such Subcontractor. The Supplier shall procure that Subcontractors comply with all applicable security policies and standards in the same way as the Supplier is required to comply with such security policies and standards. Each contract between the Supplier and a Subcontractor shall include such aspects of this Schedule 12 (**Security**) as are appropriate to the Services to be provided by that Subcontractor at the date of such contract. Without prejudice to Section 7 below, the Supplier shall, upon the request of the Customer (in its sole discretion), carry out security audits of Subcontractors and the Facilities used by Subcontractors in the provision of the Services in accordance with Schedule 10 (**Audit Access**) and at intervals agreed with the Customer provided that it shall not be reasonable for the Customer to request a security audit of a Subcontractor less than

twelve (12) months from such Subcontractor's last security audit by the Customer unless the Customer has reason to suspect security non-compliance.

- 3.8 The Customer continues to keep its Security Policy under review. Changes will be made, from time to time, in response to changes in the UK Government's security policy and as required for other reasons. The Customer shall advise the Supplier of such changes and the Supplier shall keep up-to-date with all changes to the Security Policy. The Customer may invite the Supplier to take part in the approval process that the Customer operates, as appropriate, when making Security Policy changes but the Customer will have the ultimate discretion in setting any new or changed Security Policy, standard or requirement. Changes to the Services that may be necessary to meet the changed Security Policy, standards or requirements will be agreed through the Change Control Procedure.

#### **4 MANAGING SECURITY**

- 4.1 The Supplier shall appoint a head of security with a clear ownership of the security brief within the Supplier's leadership team to be accountable for the management of security in relation to this Agreement. This individual shall be subject to, and shall obtain, the appropriate level of Security Vetting clearance, which is expected to be Security Check.
- 4.2 The Supplier shall appoint a Security Manager who will report on security matters to the Supplier individual identified in Section 4.1 above and to the Customers' Cyber Senior Information Risk Officer (Cyber SIRO). The responsibilities of the Supplier's Security Manager shall include the following:
- (a) he (or his nominated deputy) shall represent the Supplier at all meetings that address security concerns, events and issues, including the meetings described in Section 4.7, except where the Customer's Cyber Senior Information Risk Officer (Cyber SIRO) (or their representative) expressly requires otherwise;
  - (b) on a day-to-day basis, in order to ensure that security is integrated into the Supplier's and the Subcontractors' day-to-day working with respect to the Services, he shall work with the members of Supplier Personnel filling the Key Supplier Positions;
  - (c) as and when required he shall participate in the Operational Management Meetings described in Schedule 8 (**Governance**); and
  - (d) the Supplier's Security Manager shall receive service updates on a monthly basis relating to security activities from each of the Supplier's nominated individuals responsible for each component of the Services. Such nominated individuals shall further report Security Incidents promptly to the Customer's Cyber Senior Information Risk Officer (Cyber SIRO).
- 4.3 The Supplier shall ensure that the performance objectives of those members of Supplier Personnel performing key roles in the provision of the Services, (including architecture, feasibility, design, development and testing) shall include relevant security performance objectives. The Parties shall agree the type of security performance objectives for each role.



- 4.4 The Supplier shall make all necessary arrangements to oversee the day-to-day management of security in respect of the Services and shall comply with the process described in Section 6 for the resolution of concerns, events or issues relating to security.
- 4.5 The Supplier shall supply security expertise to interpret the Customer's business requirements into system architectures and implementations that conform to the Customer's Security Policy and meet the security standards. The Supplier shall enable all Supplier Personnel to have access to relevant security expertise, to ensure that the Services conform to the Customer's Security Policy and meet the security standards.
- 4.6 Subject to Sections 2.1 and 3.4 to 3.8, the Supplier shall deliver assurance to the Customer in accordance with the agreed Accreditation Process, within a reasonable time of a request by the Customer for such assurance, that the Services delivered to the Customer by the Supplier comply with the Security Policy and meet the applicable security standards or that an appropriate risk management decision agreed in writing by duly authorised representatives of the Customer enables such Services to be delivered without complying with the Security Policy or meeting the applicable security standards.
- 4.7 The Customer's security staff and the Supplier Security Manager (and at his discretion any additional relevant Supplier security personnel) will meet monthly to monitor the Supplier's management of security, discuss and resolve security issues, and share information.
- 4.8 The Supplier shall provide to the Customer's Cyber Senior Information Risk Officer (Cyber SIRO) regular reports on the status of security within the scope of the Services, as specified in Schedule 9 (**Reporting**).
- 4.9 The Supplier shall ensure that all members of Supplier Personnel involved in the provision of the Services shall have the appropriate level of security clearance, unless specific exception(s) have been granted by the Customer (at its sole discretion). The minimum is HMG Baseline Personal Security Standard, which all Supplier Personnel must have before becoming involved in the provision of the Services.
- 4.10 The Parties agree that there will be a number of positions to be filled by Supplier Personnel that require security clearance and the levels of such security clearance are determined by the security standards or as otherwise set out in the Security Aspects Letter. They are cumulative and listed in ascending order of security clearance, as assigned in accordance with the Manual of Protective Security:
- (a) HMG Baseline Personal Security Standard;
  - (b) Counter Terrorist Check;
  - (c) Security Check; and
  - (d) Developed Vetting.

The Parties shall agree the positions requiring Counter Terrorist Check, Security Check and Developed Vetting clearance. The Customer shall be entitled to change required security check levels applicable to particular individuals, post and/or roles, to reflect changes in policy or circumstances, and in such cases, the Customer shall give the

Supplier reasonable notice of such changes. In addition to the above checks, some posts will only be available to UK nationals and the Customer shall inform the Supplier in advance where this applies. Supplier Personnel who have the access or authority set out in Annex 12-2 require Security Check ("SC") clearance.

- 4.11 If the Supplier becomes aware at any time up to twenty five (25) days after the Effective Date, of any position that will not be filled by Supplier Personnel who already has the applicable security clearance, then the following shall apply:
- (a) the Supplier shall promptly notify the Customer of the identity of a particular member of Supplier Personnel to fill such position;
  - (b) the Customer will review whether to grant the proposed individual a security clearance exemption until such time as the Supplier fills the post with a member of Supplier Personnel having the appropriate security clearance in order to permit the Supplier to provide the Services;
  - (c) where the Customer notifies the Supplier that the Customer will not grant the proposed individual a security clearance exemption, the Supplier shall promptly notify the Customer of the identity of an alternative member of Supplier Personnel to fill the applicable position and the provisions of Sections 4.11(b)-4.11(d) shall apply; and
  - (d) if and to the extent that the Supplier is prevented from providing the Services as a direct result of a shortage of Supplier Personnel having the appropriate level of security clearance, then, provided that the Supplier has complied with the provisions of Sections 4.11(a) and 4.11(c) above, such shortage shall be deemed to be a Relief Event to which the provisions of Clause 16.1 of the Terms and Conditions shall, where appropriate, apply.
- 4.12 The Supplier shall provide Supplier Personnel with relevant security education and awareness, consistent with the security education and awareness provided by the Customer to its own staff and notified to the Supplier, to ensure that all members of Supplier Personnel understand their security responsibilities.

## **5 SECURITY INCIDENTS**

- 5.1 The Supplier shall report all Security Incidents of which the Supplier becomes aware, acting in accordance with its obligations under the Agreement, to the Customer.
- 5.2 The Customer may choose to investigate any or all Security Incidents or refer incidents to the police and others as required.

## **6 SECURITY ESCALATION PROCESS**

- 6.1 Without prejudice to the Escalation Process, the Parties shall comply with the procedure set out in this Section 6 with respect to concerns, events or issues relating to security during the Term.
- 6.2 Concerns, events or issues relating to security identified by any of the following persons shall be addressed in accordance with the applicable agreed process (e.g. change, problem or security management procedures):

- (a) the Customer;
  - (b) the Supplier, Supplier Personnel and Subcontractors;
  - (c) authorities external to the provision of security to the Customer (e.g. any Government Department, the NAO, NCSC or the IAO); or
  - (d) any authorities responsible for the provision of security to the Customer (e.g. persons accountable for the delivery of individual solutions).
- 6.3 Concerns, events or issues relating to security that are not resolved through the applicable agreed process in accordance with Section 6.2 above shall be escalated to the Customer's Cyber Senior Information Risk Officer (Cyber SIRO) (or their nominated representative) and the Supplier's Security Manager, as appropriate.
- 6.4 The Customer's Cyber Senior Information Risk Officer (Cyber SIRO) (or their nominated representative) may escalate concerns, events or issues relating to security further to the directors of the Customer and/or the Supplier's management team responsible for this Agreement with or without involving the Supplier's Security Management Team.
- 6.5 The Supplier's Security Management Team may escalate concerns, events or issues relating to security further to the Customer's Cyber Senior Information Risk Officer (Cyber SIRO) (or their nominated representative) or the Supplier's management team responsible for this Agreement.
- 6.6 Either the directors of the Customer or the Supplier's management team responsible for this Agreement may raise concerns, events or issues relating to security with the other.

## **7 INSPECTION**

The Customer shall have the right to inspect any and all aspects of the Supplier's operation in accordance with Schedule 10 (**Audit Access**), in order to verify compliance with the Customer's Security Policy, standards and requirements.

## ANNEX 12-1

## GSC Quick Handling Guide

**Transferring, discussing, accessing, storage and disposal of information assets**

|                                                              | OFFICIAL                                                                                                                                                                                                                                                                                     |                                                                                                                                                       | SECRET                                                                                                                                                                                                                                                                                        | TOP SECRET                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                              | OFFICIAL                                                                                                                                                                                                                                                                                     | OFFICIAL - SENSITIVE                                                                                                                                  |                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                         |
| <b>Personnel Security checks &amp; vetting checks</b>        | <ul style="list-style-type: none"> <li>No vetting check needed: basic recruitment checks are adequate</li> <li>If staff having regular uncontrolled access to buildings or material which may be of interest to terrorists, consider Counter Terrorist Check (CTC) as appropriate</li> </ul> | <ul style="list-style-type: none"> <li>As for OFFICIAL.</li> </ul>                                                                                    | <ul style="list-style-type: none"> <li>Security Check (SC) level for regular &amp; uncontrolled access</li> </ul>                                                                                                                                                                             | <ul style="list-style-type: none"> <li>Developed Vetting (DV) level for regular &amp; uncontrolled access</li> </ul>                                                                                                                                                                                    |
| <b>General personnel &amp; physical security in handling</b> | <ul style="list-style-type: none"> <li>Appropriate basic security training</li> <li>Observe clear desk/clear screen policy</li> <li>Need to know principle for sensitive assets</li> </ul>                                                                                                   | <ul style="list-style-type: none"> <li>As for OFFICIAL</li> <li>Consider proportionate measures to limit access to more sensitive material</li> </ul> | <ul style="list-style-type: none"> <li>Basic precautions as per OFFICIAL</li> <li>Register and file documents in line with local procedures</li> <li>Maintain appropriate audit trails</li> <li>Control use of photocopying in order to deter unauthorised copying or transmission</li> </ul> | <ul style="list-style-type: none"> <li>Basic precautions as per OFFICIAL</li> <li>Register movement of documents and limit knowledge of planned movements to those with a need to know</li> <li>undertake spot checks to ensure appropriate handling &amp; record keeping are being observed</li> </ul> |

|                          |                                                                                                           |                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                               |
|--------------------------|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Post and couriers</b> | <ul style="list-style-type: none"><li>• Normal letter post.</li><li>• Green polylopes using TNT</li></ul> | <ul style="list-style-type: none"><li>• Normal letter post</li><li>• Depending on sensitivity and volume of information, consider using an approved tracked service, e.g. Royal Mail special delivery or TNT Trace &amp; Trace using orange</li></ul> | <ul style="list-style-type: none"><li>• For movement of cryptographic items, contact the Crypto Custodian for advice</li><li>• Deliver by trusted hand if possible &amp; practical</li><li>• Use Royal Mail Special Delivery if posting</li><li>• Use double covers</li></ul> | <ul style="list-style-type: none"><li>• For movement of cryptographic items, contact the Crypto Custodian for advice</li><li>• Senior management approval, subject to risk assessment</li><li>• Deliver by trusted hand if possible &amp; practical</li></ul> |
|--------------------------|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                   | OFFICIAL                                                                                                                                                                                                                                                                                                                                                   |                                                                   | SECRET                                                                                                                                                                                                                                                                                                                                                                                                                 | TOP SECRET                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                   | OFFICIAL                                                                                                                                                                                                                                                                                                                                                   | OFFICIAL - SENSITIVE                                              |                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                       |
|                                                   |                                                                                                                                                                                                                                                                                                                                                            | polylopes                                                         | <ul style="list-style-type: none"> <li>Do not show Security Classification on outer cover</li> <li>Use sealed tamper-evident pouch or security container</li> <li>Comply with local procedures re management permissions and registration of documents to be sent</li> </ul>                                                                                                                                           | <ul style="list-style-type: none"> <li>Use Defence Courier Service (DCS) if posting</li> <li>Use double covers</li> <li>Do not show Security Classification on outer cover</li> <li>Use sealed tamper-evident pouch or security container</li> <li>Registration of documents to be sent</li> </ul>                                                                                    |
| <b>Remote working &amp; moving assets by hand</b> | <ul style="list-style-type: none"> <li>Ensure information cannot be overlooked</li> <li>Store more sensitive assets under lock &amp; key at remote locations</li> <li>Care of assets on public transportation and in public places</li> <li>Authorisation required for movement of significant volume of records/files (e.g. via MDTs process )</li> </ul> | <ul style="list-style-type: none"> <li>As per OFFICIAL</li> </ul> | <ul style="list-style-type: none"> <li>Risk assessment to determine need for remote working and identify appropriate controls (approval may be needed from originator)</li> <li>CPNI approved furniture at remote location</li> <li>Risk assess the need for two people to escort movement</li> <li>Sealed tamper-evident container or secure transportation products</li> <li>Not accessed in public areas</li> </ul> | <ul style="list-style-type: none"> <li>Only to be removed for remote working as an exception if essential, following acceptance of inherent risk by senior management</li> <li>Senior management approval, subject to risk assessment, for moving by hand</li> <li>Sealed tamper-evident container or secure transportation products</li> <li>Not accessed in public areas</li> </ul> |

|                                                             |                                                                                                    |                                                                                                    |                                                                                          |                                                                                         |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| <b>Moving information assets overseas (by hand or post)</b> | <ul style="list-style-type: none"><li>• If posting documents to Northern Ireland, do not</li></ul> | <ul style="list-style-type: none"><li>• As per OFFICIAL</li><li>• Do not use descriptors</li></ul> | <ul style="list-style-type: none"><li>• Mark with a national Caveat: e.g. UK -</li></ul> | <ul style="list-style-type: none"><li>• Mark with a national Caveat: e.g. TOP</li></ul> |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|

|  | OFFICIAL                                                                                                                                                                                                                                  |                                                                                                                                                               | SECRET                                                                                                                                                                                                                                                                                                                                                                                                                      | TOP SECRET                                                                                                                                                                                                                                                                                                                 |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | OFFICIAL                                                                                                                                                                                                                                  | OFFICIAL - SENSITIVE                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                            |
|  | <p>identify sender as a Government officer or use military or police ranks.</p> <ul style="list-style-type: none"> <li>Trusted hand under single cover</li> <li>Consider using a reputable courier 'track &amp; trace' service</li> </ul> | <p>(other than the SENSITIVE caveat) unless formally agreed in advance, as they are not recognised under international agreement and may cause confusion.</p> | <p>SECRET</p> <ul style="list-style-type: none"> <li>Trusted hand of appropriate security clearance (SC)</li> <li>Sealed tamper-evident container or secure transportation products</li> <li>Use double covers</li> <li>Do not show Security Classification on outer cover</li> <li>Where travelling to/via a country of special security risk, container should be carried by diplomatically accredited courier</li> </ul> | <p>SECRET - UK/US EYES ONLY</p> <ul style="list-style-type: none"> <li>Use only security cleared (DV level) diplomatically accredited courier</li> <li>Sealed tamper-evident container or secure transportation products</li> <li>Use double covers</li> <li>Do not show Security Classification on outer cover</li> </ul> |



|                                     |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                 |                                                                                                                                                         |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Phone &amp; video conference</b> | <ul style="list-style-type: none"><li>• Supplier desk phones and Supplier Blackberries (or similar devices) may be used</li><li>• Follow any local authentication procedures and ensure caller is entitled to the information<br/>Supplier Video conference System</li></ul> | <p>Supplier desk phones</p> <ul style="list-style-type: none"><li>• Do not discuss sensitive material over insecure public telephone lines, or where you may be overheard by members of the public</li><li>• Be guarded and aware of risks if referring to any sensitive material during a video conference</li></ul> | <ul style="list-style-type: none"><li>• Only discuss on specialist approved phones that have an approved encryption facility e.g. Brent phone or Sectera Mobile phone</li></ul> | <ul style="list-style-type: none"><li>• Only discuss on specialist approved phones that have an approved encryption facility e.g. Brent phone</li></ul> |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|

|               | OFFICIAL                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                               | SECRET                                                                                                                                                                                                                                                                                     | TOP SECRET                                                                                                                                                                                                                                                                                 |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|               | OFFICIAL                                                                                                                                                                                                                                                                                                                                                                                                                | OFFICIAL - SENSITIVE                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                            |
|               | <ul style="list-style-type: none"> <li>Where material has no sensitivity other phones may be used at discretion</li> </ul>                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                            |
| <b>Fax</b>    | <ul style="list-style-type: none"> <li>Supplier fax machines are suitable</li> </ul>                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>Supplier fax machines are suitable</li> <li>If material at all sensitive, ensure recipient is aware and will be waiting to receive it.</li> </ul>                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>Only transmit on fax machines that have inbuilt encryption suitable for this classification, e.g. the BRENT fax</li> </ul>                                                                                                                          | <ul style="list-style-type: none"> <li>Only transmit on fax machines that have inbuilt encryption suitable for this classification, e.g. the BRENT fax.</li> </ul>                                                                                                                         |
| <b>e-mail</b> | <ul style="list-style-type: none"> <li>For internal e-mail addresses from the Supplier's Global address list</li> <li>For external addresses ending in ".gsi.gov.uk"</li> <li>Recipient's external e-mail account only where there is a clear understanding and acceptance of risk by both parties. Written confirmation of understanding should be obtained on an organisation basis and should be retained</li> </ul> | <ul style="list-style-type: none"> <li>For internal e-mail addresses from the Supplier's Global address list</li> <li>For external addresses ending in ".gsi.gov.uk"</li> <li>For external addresses where encryption is applied using either products accredited under the CESG new CPA Foundation grade with reformed common criteria; or the older CESG schemes &amp; grades as decided on a case by case basis</li> </ul> | <ul style="list-style-type: none"> <li>This material should not be sent in clear text using internal or external HMRC email systems</li> <li>If there is a need to transmit it, consult your Data Guardian to discuss the appropriate method of transit and level of encryption</li> </ul> | <ul style="list-style-type: none"> <li>This material should not be sent in clear text using internal or external HMRC email systems</li> <li>If there is a need to transmit it, consult your Data Guardian to discuss the appropriate method of transit and level of encryption</li> </ul> |

|                |                                                                                                                 |                                                                                                                 |                                                                                                                                                   |                                                                                                                                              |
|----------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Storage</b> | <ul style="list-style-type: none"><li>• Store in locked containers, cabinets or rooms when not in use</li></ul> | <ul style="list-style-type: none"><li>• Store in locked containers, cabinets or rooms when not in use</li></ul> | <ul style="list-style-type: none"><li>• Store in approved lockable storage as available from the SEAP catalogue.</li><li>• SEAP class 3</li></ul> | <ul style="list-style-type: none"><li>• Store in approved lockable storage products as available from the SEAP catalogue. Use SEAP</li></ul> |
|----------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|

|                          | OFFICIAL                                                                                                                                                                                                                                                                |                                                                     | SECRET                                                                                                                                                                                                                                                                                                                                                   | TOP SECRET                                                                                                                                                                                                                                                                                 |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          | OFFICIAL                                                                                                                                                                                                                                                                | OFFICIAL - SENSITIVE                                                |                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                            |
|                          |                                                                                                                                                                                                                                                                         |                                                                     | <p>recommended for SECRET</p> <ul style="list-style-type: none"> <li>• Segregation of shared cabinets</li> <li>• Proportionate measures to control &amp; monitor access or movement</li> <li>• Use 'defence in depth' and risk-based decisions to consider the appropriate level of SEAP security product where other controls already exist.</li> </ul> | <p>class 4.</p> <ul style="list-style-type: none"> <li>• Use 'defence in depth' and risk-based decisions to consider the appropriate level of SEAP security product. If other controls exist, e.g. a secure limited access room, SEAP class 3 may be an acceptable alternative.</li> </ul> |
| <b>Disposal</b>          | <ul style="list-style-type: none"> <li>• Place papers in secure disposal bins as provided in your office. This waste will be shredded and recycled.</li> <li>• Non-paper media such as CDs, floppy disks, USBs should be sent for secure destruction using a</li> </ul> | <ul style="list-style-type: none"> <li>• As for OFFICIAL</li> </ul> | <ul style="list-style-type: none"> <li>• Shred papers using an approved cross-cut shredder. The shreds can then be added to the disposal bins</li> </ul>                                                                                                                                                                                                 | <p>Shred papers using an approved cross-cut shredder. The shreds can then be added to the disposal bins</p>                                                                                                                                                                                |
| <b>Moving to archive</b> | <ul style="list-style-type: none"> <li>• Transfer as open records whenever possible, in accordance with the</li> </ul>                                                                                                                                                  | <ul style="list-style-type: none"> <li>• As for OFFICIAL</li> </ul> | <ul style="list-style-type: none"> <li>• Retain as long as classification level applies</li> </ul>                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>• Retain as long as classification level applies</li> </ul>                                                                                                                                                                                         |

|                                                             |                                                                                                               |                                                                   |                                                                                                          |                                                                                                      |
|-------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| <b>Encryption where needed<br/>(e.g. in transit over an</b> | <ul style="list-style-type: none"><li>• Products accredited under the CESG new CPA Foundation grade</li></ul> | <ul style="list-style-type: none"><li>• As for OFFICIAL</li></ul> | <ul style="list-style-type: none"><li>• Products accredited under the CESG CAPS Enhanced grade</li></ul> | <ul style="list-style-type: none"><li>• Products accredited under the CESG CAPS High grade</li></ul> |
|-------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|

|                                                                    | OFFICIAL                                                                                                                                                                                                                                                                                                                       |                                                                   | SECRET                                                                                                                                                                                         | TOP SECRET                                                                                                   |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
|                                                                    | OFFICIAL                                                                                                                                                                                                                                                                                                                       | OFFICIAL - SENSITIVE                                              |                                                                                                                                                                                                |                                                                                                              |
| <b>internet link, stored on mobile devices)</b>                    | with reformed common criteria; or <ul style="list-style-type: none"> <li>The older CESG schemes &amp; grades as decided on a</li> </ul>                                                                                                                                                                                        |                                                                   | <ul style="list-style-type: none"> <li>Products accredited under the CESG CAPS High grade</li> </ul>                                                                                           |                                                                                                              |
| <b>Customer Data or HMRC Customer Data bearing removable media</b> | <ul style="list-style-type: none"> <li>Use of removable media minimised: other approved information exchange mechanisms should be used where available.</li> <li>Use the Managed Data Transfer Service (MDTS) and Secure Electronic Transfer for movements. Data Guardians can advise</li> <li>Consider appropriate</li> </ul> | <ul style="list-style-type: none"> <li>As per OFFICIAL</li> </ul> | <ul style="list-style-type: none"> <li>Content of removable media appropriately encrypted unless (by exception) there exists appropriate full life physical protection</li> </ul>              | <ul style="list-style-type: none"> <li>As per SECRET</li> </ul>                                              |
| <b>Bulk transfers</b>                                              | Local management approval. MDTS service: follow Data Guardian Advice. inclusive of risk assessment & movement plans                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>As per OFFICIAL</li> </ul> | Senior Management approval Data Guardian advice on MDTS Commercial companies could be used, provided information transported in sealed containers/crates, accompanied by staff, and movement & | <ul style="list-style-type: none"> <li>As per SECRET</li> <li>Local police aware of movement plan</li> </ul> |

|                                          | <b>OFFICIAL</b>                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                             | <b>SECRET</b>                                                                                                                                                                                                                                                                                                                  | <b>TOP SECRET</b>                                                                                                                                                                                                                                                                                                              |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                          | <b>OFFICIAL</b>                                                                                                                                                                                                                                                                                                | <b>OFFICIAL - SENSITIVE</b>                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                |
|                                          |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                             | contingency plans are in place                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                |
| <b>Electronic information at rest</b>    | <ul style="list-style-type: none"> <li>Data at rest in a system protected by default by appropriate physical security Foundation level encryption where physical controls not guaranteed (e.g. laptop) or the older CESG schemes &amp; grades as decided on a case by case basis</li> </ul>                    | <ul style="list-style-type: none"> <li>As per OFFICIAL</li> </ul>                                                                                                                                                           | <ul style="list-style-type: none"> <li>Data at rest in a system protected by default by appropriate physical security</li> <li>(Revitalised) Enhanced encryption where physical controls not guaranteed (e.g. laptop)</li> </ul>                                                                                               | <ul style="list-style-type: none"> <li>Data at rest in a system protected by default by appropriate physical security</li> <li>High Grade Encryption where physical controls not guaranteed (e.g. laptop)</li> </ul>                                                                                                           |
| <b>Electronic information in transit</b> | <ul style="list-style-type: none"> <li>Information in transit between Government or other trusted organisations will be via accredited shared infrastructure (such as PSN) or protected using Foundation grade encryption or the older CESG schemes &amp; grades as decided on a case by case basis</li> </ul> | <ul style="list-style-type: none"> <li>As per OFFICIAL</li> <li>Where more sensitive must be shared with external partners (e.g. citizens), consider using secure mechanisms e.g. browser sessions using SSL/TLS</li> </ul> | <ul style="list-style-type: none"> <li>Information in transit only exchanged via appropriately secure mechanism: use of appropriately accredited shared services or (revitalised) Enhanced grade encryption</li> <li>Information only shared with defined users on appropriate and accredited recipient ICT systems</li> </ul> | <ul style="list-style-type: none"> <li>Information in transit only exchanged via appropriately secure mechanism: use of appropriately accredited shared services or (revitalised) Enhanced grade encryption</li> <li>Information only shared with defined users on appropriate and accredited recipient ICT systems</li> </ul> |

|              | OFFICIAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                   | SECRET                                                                                                                                                                                                                                                                                                                                                                                                                            | TOP SECRET                                                                                                                                                                                      |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              | OFFICIAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | OFFICIAL - SENSITIVE                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                 |
| ICT services | <ul style="list-style-type: none"> <li>Different GCloud services suitable for different types of OFFICIAL information. Risk owners must read &amp; understand any GCloud accreditation residual risk statements</li> <li>ICT services developed by a Department or delivery partner must follow the risk management processes as set out in HMG IA Standards IS1 and 2 and follow standard architectural approaches</li> <li>End user devices will conform to the security principles defined in Cabinet Office <i>End User Device (EUD) Strategy: Security Framework and Control</i></li> </ul> | <ul style="list-style-type: none"> <li>As per OFFICIAL</li> </ul> | <ul style="list-style-type: none"> <li>ICT Services must be accredited as appropriate considering the SECRET threat model. CESG design patterns or bespoke advice may be required</li> <li>Very careful risk assessment and understanding of implications of enabling functionality</li> <li>Information exchange outside of the SECRET tier will be highly constrained and managed using shared accredited capability</li> </ul> | <ul style="list-style-type: none"> <li>ICT systems designed must be accredited as appropriate considering the TOP SECRET threat model. Bespoke architectural advice may be necessary</li> </ul> |



|                           |                                                                                                                                                                                                             |                                                                   |                                                                                                                                                                                                            |                                                                                                                                        |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Incident reporting</b> | <ul style="list-style-type: none"><li>• Local reporting arrangements: report using the security incident reporting system within 2 days.</li><li>• Serious incidents to be escalated via the LIAM</li></ul> | <ul style="list-style-type: none"><li>• As per OFFICIAL</li></ul> | <ul style="list-style-type: none"><li>• Report locally using the security incident reporting system immediately</li><li>• DSO and SIRO notified, local procedure followed<br/>Consider notifying</li></ul> | <ul style="list-style-type: none"><li>• As per SECRET</li><li>• Accounting Officer, Minister and Cabinet Office also alerted</li></ul> |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|

|  | <b>OFFICIAL</b>                                                                                                                                                                                                                                                                                                                                       |                             | <b>SECRET</b>                                                                                                                                                                                                                                          | <b>TOP SECRET</b> |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|  | <b>OFFICIAL</b>                                                                                                                                                                                                                                                                                                                                       | <b>OFFICIAL - SENSITIVE</b> |                                                                                                                                                                                                                                                        |                   |
|  | (Live Incident Assurance Manager) reporting process and calling of SIPs (Serious Incident Panels) as appropriate <ul style="list-style-type: none"> <li>• Escalation to DSO and SIRO as appropriate for significant incidents</li> <li>• ICO notified of 'significant' losses of personal data</li> <li>• GovCert/CINRAS for ICT incidents</li> </ul> |                             | Accounting Officer and responsible Minister <ul style="list-style-type: none"> <li>• ICO notified if personal information</li> <li>• May be appropriate for Police investigation, subject to damage test and Cabinet Office gateway process</li> </ul> |                   |

**ANNEX 12-2**

1. Supplier Personnel who have the below access or authority require SC clearance:
  - (a) Access to HMG crypto and encryptors. This includes unescorted access to where the devices are stored and any individuals transporting or installing the devices.
  - (b) Any administrator or TACACS (Terminal Access Controller Access Control System) who have access to the Customer's live systems. If any development environments contain live data then these are to be treated as live or production systems. This also includes access to tools which may allow access to HMRC Customer Data.
  - (c) Access to HMRC Customer Data (unencrypted), including Special Customer Records (SCRs) via media, network probes, sniffers, capture devices or databases.
  - (d) Any individual who is able to provide administrator access to an individual.
  - (e) Any access to security reports, including incidents and system risks.

## **SCHEDULE 13**

### **STANDARDS AND REGULATIONS**

## SCHEDULE 13

### STANDARDS AND REGULATIONS

#### 1 INTRODUCTION

- 1.1 This Schedule lists the mandatory and binding legal regulations, policies and procedures that will apply to the provision of the VPaaS Services during the Term.
- 1.2 This Schedule also sets out any industry standards and Customer or central government internal policies which must be adhered to by the Supplier.
- 1.3 The Supplier's obligation to comply with the standards and regulations set out below applies notwithstanding the Supplier's general obligations to comply with applicable Laws set out in Clause 26.3 of the Terms and Conditions.

#### 2 STANDARDS AND REGULATIONS

Without prejudice to the generality of Clauses 26.3 and 26.4 of the Terms and Conditions, the Supplier shall, during the Term, comply (and shall ensure compliance by Subcontractors and Supplier Personnel) with the following Laws, standards and regulations (as amended, repealed or re-enacted from time to time) as they apply to the provision of the VPaaS Services.

##### 2.1 Industry Standards

Where a standard is referred to in this Schedule, it shall include reference to supporting standards and/or documentation and to any standard which amends, extends, consolidates or replaces the same.

###### (a) System Standards

- (i) The Supplier has documented the design of the Prime VPaaS Services and CHIEF VPaaS Services in Schedule 2 (**Services**) and Annex 2.1 (Technical Infrastructure), and the Supplier shall keep such documentation up-to-date throughout the Term.
- (ii) The Supplier shall be provided with a technical standards catalogue by the Customer. The technical standards catalogue shall identify the relevant standards which are used in the provision of the Modernisation services and Application Services.

###### (b) IT Service Management Standards

The Supplier will deliver all relevant elements of service management in respect of the Services in a manner which is consistent with the principles set out in the Information Technology Infrastructure Library Standards (ITIL).

###### (c) Project Management Standards

The Supplier will manage any Projects for the Customer using a recognised project management methodology agreed with the Customer.

(d) Quality Management Standards

- (i) Subject as described below, the Supplier shall implement, in accordance with Good Industry Practice, relevant quality processes in the provision of the VPaaS Services.
- (ii) The Supplier shall not knowingly do or knowingly cause to be done anything which may jeopardise or hinder the Customer's own quality standard accreditation.

(e) Security Standards

The Supplier shall implement security processes and standards which conform with the procedures set out in Schedule 12 (**Security**).

## 2.2 **Customer and Central Government Internal Policies and Standards**

The Supplier shall conform with the following internal policies of the Customer, or policies of UK Government to which the Customer adheres:

(a) Data Administration

- (i) The Supplier shall comply with implemented shared data definitions as directed by the Customer.
- (ii) The Customer Data is part of the Customer's departmental records and is subject to the terms of the Public Records Acts of 1958 and 1967 (as amended by the Freedom of Information Act 2000). The Supplier shall comply with the Customer's delegations under such Public Records Acts for archiving, retention and destruction of elements of the Customer Data in the provision of the VPaaS Services.

(b) Project Management

The Supplier shall use recognised project management methodologies agreed with the Customer.

(c) Use of Overseas Services

Clause 21.2 of the Terms and Conditions sets out the Customer's policy regarding the use of the Customer Data, and the provision of the VPaaS Services from outside the United Kingdom.

(d) The Customer Internet Site Privacy Policy

The Supplier shall comply with all aspects of the Customer's Internet Site Privacy Policy as set out in the Customer's Acceptable Use of Internet and IT Systems Policy, version 8.8 and dated 12<sup>th</sup> March 2019.

(e) The Customer E-mail Policy

The Supplier shall ensure that all Supplier Personnel comply with the Customer's policy on the use of e-mail as set out in the Customer's Acceptable Use of Internet and IT Systems Policy, version 8.8 and dated 12<sup>th</sup> March 2019.

(f) Access to Government Information

The Supplier shall comply with, and shall facilitate the Customer's compliance with, the Freedom of Information Act 2000, in accordance with its obligations set out in Clause 22.2 of the Terms and Conditions.

## 2.3 **Amended or New Standards, Regulations or Policies**

The standards, regulations and/or policies referred to in Sections 2.1 and 2.2 above may be amended, removed or replaced as agreed between the Parties through the Change Control Procedure. Neither Party will unreasonably withhold or delay its consent to such Changes.

## 2.4 **Interoperability and Use of Technical Standards**

Save as expressly set out in Schedule 2 (**Services**), and where reasonably possible, the Supplier shall ensure that key elements of the VPaaS Services that it introduces throughout the Term will be compatible, so as to be interoperable (with reasonable adjustments) with both the existing elements of the VPaaS Services and other items and/or the Customer's VME Applications (providing that such VME Applications have been written for use on VME in accordance with VME good coding practice and also updated appropriately for MVE in accordance with the terms of this Agreement) and other Software set out in Annex 2-4 (Third Party Contracts and Licences) to Schedule 2 (**Services**) being software provided to the Customer by third parties which by inclusion in Annex 2-4 the Supplier knows or should reasonably be expected to know are required to be compatible. For the avoidance of doubt it shall be the Customer's obligation to ensure that any such software set out in Annex 2-4 is updated to ensure that it will operate in MVE as well as VME.

## 2.5 **Special site requirements**

- (a) Where the Customer has a presence at the premises owned or controlled by third parties, special requirements may apply to the Supplier, including its staff and agents, at those locations.
- (b) Subject at all times to compliance by the Supplier and its personnel with the relevant requirements in accordance with Section 2.5(c), the Customer shall promptly take all steps reasonably required by the Supplier to enable the Supplier and its personnel to access such premises and third party sites

(including data centres) as reasonably required by the Supplier to perform the VPaaS Services, unless agreed otherwise by the Parties.

- (c) The Supplier, while working at any such locations, shall operate in accordance with any such requirements of the site operator or other relevant party as notified to the Supplier.

For example, the British Airports Authority (BAA) normally insists that personnel who are required to go airside at its airports:

- (i) must previously have been cleared through additional security vetting procedures;
- (ii) must previously have passed a special airside driving test; and
- (iii) must be covered by adequate insurance – for example, as protection against claims for damage to aircraft through collision or other action.

### **3 ON-GOING DELIVERABLES**

- 3.1 During the Term, the Customer may require evidence of the Supplier's compliance with all or any applicable standards and regulations and the Supplier shall provide such evidence upon receipt of written request from the Customer. Such evidence shall be provided as described in the remainder of this Section 3.
- 3.2 Where certification is awarded by an authorising body to the Supplier or Subcontractor, the Supplier shall provide a copy of the current certificate to the Customer.
- 3.3 For those standards and regulations not covered by authorising body's certification, the Supplier shall provide an audit report or similar statement of conformance.
- 3.4 For the Customer's internal policies, the Supplier shall describe how these policies are being complied with and shall ensure that they are made available to the Customer on request.

### **4 QUALITY PRINCIPLES**

- 4.1 The Supplier shall provide the VPaaS Services in accordance with the following quality principles (as applicable from time to time) and shall maintain the same or similar quality principles throughout the Term. The Supplier shall notify any material change to these principles and notify the Customer if the Supplier intends to move away from these principles:
  - (a) Delivery of the VPaaS Services is aligned to the Supplier's Europe Business Management System (EBMS) and as such is compliant with the requirements of ISO/IEC 20000-1 Service Management.
  - (b) The Supplier's software development of MVE follows the VME Common Engineering Definition (VMECED) – a set of standard processes, input and output work products, procedures, work instructions, tools and methods derived from areas such as ISO/IEC TR 15504-2:1998, Software Process Assessment and CMMI for Development v1.3. The VMECED forms part of



Fujitsu's overall approach to quality, aligned to the EBMS which remains certified to ISO9001.

- 4.2 Upon a reasonable request from the Customer for collaboration, the Supplier shall provide assistance to the Customer to help it understand relevant resultant processes and how they are implemented and assured so as to maintain and deliver a VPaaS Service of suitable quality.

## Annex 13-1

### THE CUSTOMER'S "TEST FOR TAX NON-COMPLIANCE"

#### 1 **CONDITION ONE (AN IN-SCOPE ENTITY OR PERSON)**

- 1.1 There is a person or entity which is either: ("X")
- (a) The Economic Operator or Essential Subcontractor (EOS)
  - (b) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with IFRS 10 Consolidated Financial Accounts<sup>1</sup>;
  - (c) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

#### 2 **CONDITION TWO (ARRANGEMENTS INVOLVING EVASION, ABUSE OR TAX AVOIDANCE)**

- 2.1 X has been engaged in one or more of the following:
- (a) Fraudulent evasion<sup>2</sup>;
  - (b) Conduct caught by the General Anti-Abuse Rule<sup>3</sup>;
  - (c) Conduct caught by the Halifax Abuse principle<sup>4</sup>;
  - (d) Entered into arrangements caught by a DOTAS or VADR scheme<sup>5</sup>;
  - (e) Conduct caught by a recognised 'anti-avoidance rule'<sup>6</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
  - (f) Entered into an avoidance scheme identified by HMRC's published Spotlights list<sup>7</sup>; or
  - (g) Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

#### 3 **CONDITION THREE (ARRANGEMENTS ARE ADMITTED, OR SUBJECT TO LITIGATION/PROSECUTION OR IDENTIFIED IN A PUBLISHED LIST (SPOTLIGHTS))**

- 3.1 X's activity in Condition 2 is, where applicable, subject to dispute and/or litigation as follows:
- (a) In respect of (a), either X:

- (i) Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure<sup>8</sup>; or,
  - (ii) Has been charged with an offence of fraudulent evasion.
- (b) In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
- (c) In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
- (d) In respect of (f) this condition is satisfied without any further steps being taken.
- (e) In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (a) to (c).
- 4 For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

<sup>1</sup><https://www.iasplus.com/en/standards/ifrs/ifrs10>

<sup>2</sup>'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

<sup>3</sup>'General Anti-Abuse Rule' means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

<sup>4</sup>'Halifax Abuse Principle' means the principle explained in the CJEU Case C-255/02 Halifax and others

<sup>5</sup>A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and 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 s.132A Social Security Administration Act 1992.

<sup>6</sup>The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

<sup>7</sup>Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website:

<https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

<sup>8</sup>The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

**SCHEDULE 14**  
**EMPLOYEES AND SUBCONTRACTORS**

## SCHEDULE 14

### EMPLOYEES AND SUBCONTRACTORS

#### 1 INTRODUCTION

1.1 This Schedule sets out:

- (a) terms relating to Supplier Personnel (including the appointment, use, compliance and replacement of Key Supplier Positions and terms relating to TUPE and secondments); and
- (b) the terms upon which the Supplier may subcontract some of its obligations to Subcontractors throughout the Term.

1.2 The Supplier shall provide all reasonable information and assistance to enable the Customer to retain adequate visibility of the continuity, quality and performance of the Services during the Term and, if required, to ensure a smooth transition to a Successor Supplier at the end of the Term.

1.3 The No-Disclosure Undertakings set out in Annexures 14-2 and 14-3 are to be used in accordance with Clause 23 (**Confidentiality**) of the Terms and Conditions.

#### 2 EMPLOYEES

##### 2.1 Key Supplier Positions

- (a) Part I of Annex 14-1 sets out the Key Supplier Positions together with Supplier Personnel approved to fill such positions.
- (b) The Customer may, from time to time, designate new or alternative Key Supplier Positions in accordance with this Schedule but shall not, without the Supplier's consent (such consent not to be unreasonably withheld or delayed), materially increase the proportion of Key Supplier Positions relative to the total number of Supplier Personnel required to provide the Services.

##### 2.2 Key Supplier Position Approvals Procedure

Before assigning a member of the Supplier Personnel to a Key Supplier Position, whether as an initial assignment or a subsequent assignment, the Supplier shall comply with the following procedure:

- (a) The Supplier shall:
  - (i) notify the Customer of the proposed assignment;
  - (ii) identify the member of Supplier Personnel to appropriate Customer representatives (and, upon request, provide such representatives with the opportunity to meet with the individual); and
  - (iii) provide the Customer with a curriculum vitae for the member of Supplier Personnel and such other information as the Customer may

request about their training, experience and skills relevant to the requirements of the Key Supplier Position.

- (b) If the Customer objects to the proposed assignment, the Customer and the Supplier shall each use Commercially Reasonable Efforts to resolve the Customer's concerns.
- (c) If the Customer and the Supplier are unable to resolve the Customer's concerns within five (5) Working Days, the Supplier shall not assign the member of Supplier Personnel to the Key Supplier Position and shall propose to the Customer the assignment of another member with sufficient training, experience and skills suitable to the requirements of that position, and the provisions of this Section 2.2 shall apply to that member of Supplier Personnel. Until such time as the Key Supplier Position has been filled, if the Supplier cannot demonstrate to the Customer's reasonable satisfaction that the responsibilities of the Key Supplier Position are being adequately performed in the short term by other Supplier Personnel, the Service Charges will be reduced by an agreed daily rate representing such Key Supplier Position's Man-day rate. The Customer shall not unreasonably refuse or delay the appointment of a suitable member of Supplier Personnel to a Key Supplier Position.

### 2.3 Retaining Key Supplier Positions

- (a) The Supplier shall ensure that the Key Supplier Positions are filled at all times and that:
  - (i) save where an individual filling a Key Supplier Position is promoted within the provision of the Services, Supplier Personnel filling Key Supplier Positions shall not, at any time during the Term, be reassigned or replaced for at least two (2) years following assignment to those positions; and
  - (ii) each of the Supplier Personnel filling Key Supplier Positions will continue to be offered terms and conditions of employment which are competitive with those offered elsewhere in comparable roles,

unless a member of Supplier Personnel filling a Key Supplier position resigns from his or her employment, or terminates his or her contract with the Supplier or is unable to work (including owing to parental leave, mental or physical incapacity) for a period exceeding fifteen (15) Working Days, or is reasonably dismissed or terminated, provided always, and subject to Section 2.3(a)(i), that the Supplier will use its Commercially Reasonable Efforts to retain the Supplier Personnel identified in Part I of Annex 14-1 in its employment once in the Key Supplier Positions.

- (b) The Supplier shall not replace a member of Supplier Personnel filling a Key Supplier Position without first complying in full with Section 2.2 and by:
  - (i) giving the Customer four (4) months' notice that it proposes to replace a member of Supplier Personnel filling a Key Supplier Position except where compliance with such a requirement is not possible because it is out of the Supplier's control (for example, where a member of Supplier

Personnel filling a Key Supplier Position resigns or leaves employment on shorter notice);

- (ii) demonstrating to the Customer that the proposed replacement for the member of Supplier Personnel filling the Key Supplier position is fully qualified to meet the requirements of the Key Supplier Position and ensuring that the proposed replacement obtains sufficient training, including any necessary handover period with the previous incumbent of that Key Supplier Position where such handover is possible, provided that the Supplier shall use Commercially Reasonable Efforts to effect such a handover; and
- (iii) obtaining the Customer's prior written consent (such consent shall not be unreasonably withheld or delayed).

## 2.4 Key Customer Positions

- (a) Part II of Annex 14-1 sets out the individuals appointed as at the Effective Date to fill the Key Customer Positions. The continued involvement of certain Key Customer Positions (denoted as 'Key Refresh Personnel' in Part II of Annex 14-1) ("**Key Refresh Customer Personnel**") is an essential requirement in order to support the successful conclusion of the VPaaS Environment Refresh.
- (b) Subject to Sections 2.4(c) to 2.4(h) (inclusive), the Customer shall use Commercially Reasonable Efforts to ensure that each of the individuals filling Key Customer Positions will continue to be offered terms and conditions of employment which are competitive with those offered elsewhere in comparable roles, unless the individual filling a Key Customer Position resigns from his or her employment, or terminates his or her contract with the Customer or is unable to work (including but not limited to) owing to parental leave, mental or physical incapacity for a period exceeding fifteen (15) Working Days, or is reasonably dismissed or terminated, provided always, and that the Customer agrees to use its Commercially Reasonable Efforts to retain the individuals identified in Part II of Annex 14-1 in its employment.
- (c) The Customer shall use reasonable endeavours to ensure that any Key Refresh Customer Personnel remain in their position during the Term.
- (d) The Customer shall take reasonable steps to ensure that the role of any Key Refresh Customer Person is not vacant for any longer than ten (10) Working Days and that any replacement shall be no less qualified and experienced than the previous incumbent and fully competent to carry out the tasks assigned to the Key Refresh Customer Person whom he or she has replaced.
- (e) The Customer shall use reasonable endeavours to ensure that each of the Key Refresh Customer Personnel shall dedicate sufficient time to perform the obligation of that person's role.
- (f) The Supplier acknowledges that if a Key Refresh Customer Person is a contractor to the Customer, such individual may leave on short notice and it may take the Customer a longer period of time to replace such Key Refresh Customer Person.



- (g) The list of Key Refresh Customer Personnel set out in Part II of Annex 14-1 is correct as at the Effective Date. The Parties shall update (as is necessary) the list of Key Refresh Customer Personnel at the Contract Management Meetings.
- (h) The Supplier shall not be liable for the cost of replacing any Key Refresh Customer Personnel.

## 2.5 Use and Compliance of Supplier Personnel

- (a) The Supplier shall:
  - (i) use an adequate number of Supplier Personnel to provide the Services in accordance with its obligations under this Agreement, including Schedule 4 (**Service Measurement**);
  - (ii) ensure that all Supplier Personnel who perform the Services are properly trained and capable of meeting the requirements of the tasks assigned to them in a professional and timely manner and to a standard acceptable to the Customer; and
  - (iii) ensure that all Supplier Personnel comply with:
    - (A) any applicable policies, rules or procedures identified by the Customer to the Supplier from time to time which shall include any health or safety requirements, building access and security procedures and policies relating to the conduct of personnel admitted to the Customer's (or a third party's) premises; and
    - (B) the Supplier's confidentiality and security obligations under this Agreement.

## 2.6 Turnover of Supplier Personnel

The Customer and the Supplier agree that it is in their best interests to minimise the turnover rate of Supplier Personnel performing the Services ("**Turnover Rate**"). Accordingly, the Supplier shall use Commercially Reasonable Efforts to keep the Turnover Rate to a level acceptable to the Customer (in its sole discretion) and shall provide the Customer with an annual report on the Turnover Rate of the Key Supplier Positions. If the Customer notifies the Supplier that it considers that the Turnover Rate is not acceptable, the Supplier shall, as soon as reasonably practicable:

- (a) provide to the Customer sufficient data to establish the actual extent of the Turnover Rate including, in particular, the Turnover Rate among Key Supplier Positions;
- (b) meet with the Customer to discuss the impact of the level of the Turnover Rate; and
- (c) submit to the Customer a proposal for reducing the Turnover Rate which, once agreed in writing between the Customer and the Supplier, shall form part of the Agreement.

## 2.7 Replacement of Supplier Personnel at the Customer's Request

- (a) If the Customer has concerns about the performance of any member of Supplier Personnel, the following procedure shall apply:
  - (i) the Customer shall notify the Supplier of such concerns, stating its reasons;
  - (ii) the Supplier shall have five (5) Working Days in which to investigate matters stated in the notice, discuss its findings with the Customer and make recommendations to the Customer as to how the situation can be rectified, including, if the Supplier thinks necessary, through the replacement of the applicable member of Supplier Personnel; and
  - (iii) following such discussion and the Customer's consideration of the Supplier's recommendations, the Supplier shall implement such recommendations as the same may be amended by agreement with the Customer, provided that if the Customer is not reasonably satisfied with the Supplier's recommendations or cannot agree appropriate amendments to such regulations and nevertheless requires replacement of the member of Supplier Personnel, the Supplier shall replace that member of Supplier Personnel with another member of Supplier Personnel with sufficient training, experience and skills suitable to meet the requirements of assigned Services tasks.
- (b) Notwithstanding Section 2.7(a) above, if, in its absolute discretion, the Customer believes that a member of Supplier Personnel is:
  - (i) a threat to the health, safety or security of any of the Customer's or a third party's personnel, data or property (including Customer Data and/or HMRC Customer Data); or
  - (ii) materially in breach of any Customer or third party policy or procedure, which was previously notified to the Supplier,

then the Supplier shall remove that member of Supplier Personnel from the provision of the Services immediately upon receipt of notice from the Customer. The Customer shall inform the Supplier of the reason for any notice provided under this Section 2.7(b). The Customer shall provide the Supplier with the relevant details concerning the Supplier Personnel's acts or omissions which led to the Customer issuing the notice under this Section 2.7(b), save in circumstances where, in the Customer's reasonable discretion, it is unable to do so. If this Section 2.7(b) prevents the Supplier from complying with the requirements of any regulatory body concerning the protection of the health and safety of employees, contractors and Subcontractors within the Supplier's organisation or if the immediate removal of the Supplier Personnel would have a material adverse impact on the delivery of provision of the Services, the Supplier shall notify the Customer and, subject to the Customer's prior written consent, the relevant member of Supplier Personnel shall be removed as soon as possible to accommodate the Customer's concerns.
- (c) If and when instructed by the Customer (for reasons connected with monitoring or enforcing compliance with the statutes and regulations for the enforcement of which the Customer has any statutory responsibility), the Supplier shall (to

the extent to which it is legally entitled to do so) give to the Customer a list of names and addresses of all persons who are or who may be at any time concerned with the performance of the Supplier's obligations under this Agreement or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence: (A) as the Customer may reasonably require; and (B) as may be within the Supplier's possession and/or control. The Parties shall agree the timing for the provision of such information, taking account of the scope of the request from the Customer and the degree of urgency of the Customer's requirement. Notwithstanding Sections 2.7(a) and 2.7(b) above, if the Customer gives the Supplier notice that any person is not to become involved in or is to be removed from involvement in the performance of the Agreement or any specified function in relation to the performance of the Agreement, the Supplier shall:

- (i) comply with such notice;
  - (ii) if required by the Customer, shall replace any person removed under this Section with another suitably qualified person;
  - (iii) procure that any pass(es) issued to the person removed is(are) surrendered, and that all appropriate steps are taken to ensure that that person is not able to access the Technical Infrastructure or any Customer Data; and
  - (iv) bear the reasonable cost of any notice, instruction or decision of the Customer under this Section.
- (d) The decision of the Customer under Section 2.7(c) above as to whether any person is not to become involved in or is to be removed from involvement in the performance of the Agreement and as to whether the Supplier has furnished the information or taken the steps required by this Clause shall be final and conclusive, provided that the Customer shall not make any such decision unreasonably.
- (e) The Customer will use its Commercially Reasonable Efforts to provide all reasonable assistance to the Supplier in defending any Claims which arise as a result of the Supplier's removal of Supplier Personnel from the provision of the Services at the Customer's request pursuant to Sections 2.7(a)(iii) and 2.7(b).
- (f) Nothing in this Schedule 14 shall grant to the Customer the right to require the Supplier to terminate a member of Supplier Personnel's employment or contract with the Supplier.

## 2.8 Regular Reports

The Supplier shall provide the Key Supplier Positions Report in accordance with Schedule 9 (**Reporting**).

## 2.9 Protected Supplier Personnel and TUPE

The provisions of Annex 14-5 will apply in relation to the protections for Protected Supplier Personnel and the application of TUPE in respect of In-Scope Supplier Personnel.

## 2.10 **Secondment of Supplier Personnel to the Customer**

Annex 14-6 sets out the Customer's standard Secondment Agreements in respect of any secondment of personnel from the Supplier to the Customer or from the Customer to the Supplier. The Supplier agrees that these Secondment Agreements shall be used as a template where the Supplier secondes personnel to or accepts secondees from the Customer pursuant to Clause 13 of the Terms and Conditions. Every secondment will be discussed on a case-by-case basis which may result in amendments being made to the template Secondment Agreements at Annex 14-6. In particular the following issues will be discussed between the Parties on a case-by-case basis:

- (a) responsibility for the payment of salary, benefits and tax to the seconded personnel;
- (b) confidentiality issues;
- (c) events entitling the Parties to terminate the secondment;
- (d) the standard to be used by the Parties when procuring performance of the seconded personnel; and
- (e) liability for actions of the seconded personnel.

## 3 **SUBCONTRACTORS**

### 3.1 **Application**

This Section 3 applies to all Subcontractors.

### 3.2 **Subcontractor Flow Down**

- (a) The Supplier shall ensure that each subcontract with a Subcontractor imposes or confers (as applicable) on that Subcontractor:
  - (i) obligations in respect of the provision of the Services and the behaviour of Subcontractor Personnel which are consistent (to the extent appropriate to the relevant subcontracted services) with the provisions of the Agreement as they apply to the Supplier and Supplier Personnel;
  - (ii) any of the Customer's rules, guidelines, policies and procedures that are imposed by the Customer and are relevant to the Subcontractor's provision of the Services or the Subcontractor's access to or use of Customer's Confidential Information, HMRC Customer Data, Customer Data or resources or facilities provided by the Customer;
  - (iii) the Security Policy and standards of the Agreement including Schedule 12 (**Security**), as they apply to the Supplier (including, in particular, Section 3.7 of that Schedule);

- (iv) any regulatory requirements (including rights of access and audit) which may apply to any Subcontractor Personnel in the provision of the Services;
- (v) appropriate obligations in respect of confidentiality, security and data protection; and

- (vi) appropriate rights and obligations in respect of confidentiality,

and in respect of the following, shall use Commercially Reasonable Efforts to ensure that each subcontract with a Subcontractor imposes on that Subcontractor:

- (i) the right for the Customer (and, where possible, a Successor Supplier) to take an assignment or novation of the subcontract (or part of the subcontract where relevant), if the Agreement is terminated or applicable services are removed from the Agreement for any reason;
  - (ii) an assignment to the Customer of all title to, and Intellectual Property Rights in, Material created by the Subcontractor (or its employees, contractors or agents) in the course of supplying the services under the subcontract; and
  - (iii) an indemnity in favour of the Customer in respect of any Claim by any employee, worker or agent of the Subcontractor that he or she has an employment relationship with the Customer.
- (b) Where the Supplier is unable to achieve a subcontract containing the requirements set out in Section 3.2(a) above, the Supplier shall notify the Customer of the alternative terms which it is able to achieve and the Customer shall advise the Supplier whether or not such alternative terms are acceptable. Where the Customer advises the Supplier that such alternative terms are unacceptable, the Parties shall agree a work around or alternative solution in accordance with the Change Control Procedure.
  - (c) The Supplier shall, as soon as is reasonably practicable, notify the Customer of any proposed new subcontract or amendment to an existing subcontract executed between the Supplier and a Subcontractor, and if requested, the Supplier shall provide the Customer with a copy of such proposed new subcontract or amendment to an existing subcontract.
  - (d) The Supplier shall not insert any express contractual provisions into any subcontract which would prevent a Subcontractor contracting directly with the Customer or a Successor Supplier.

### 3.3 Rectification

- (a) The Supplier shall:
  - (i) notify the Customer as soon as is reasonably practicable and, in any event, within eight (8) Working Days of becoming aware of an act or omission of any Subcontractor or any Supplier Personnel which causes

a problem or delay that has a material impact on the Supplier's ability to provide the Services;

- (ii) notify the Customer as soon as is reasonably practicable if, in good faith:
  - (A) the Supplier has doubts concerning an Subcontractor's ability to render future provision of the Services because of changes in such Subcontractor's ownership, management, financial condition, or otherwise, or there have been material misrepresentations by or concerning such Subcontractor's ability; or
  - (B) the Supplier believes, in its reasonable judgement, that the Subcontractor (or its personnel) is a threat to the health, safety or security of the Customer (or its personnel); and
- (iii) work with the Customer, third parties appointed by the Customer and all relevant Subcontractors and use its Commercially Reasonable Efforts to prevent or circumvent the problem or delay.

### 3.4 Replacement of Subcontractor

- (a) If the Customer has concerns about the performance of any Subcontractor, the following procedure shall apply:
  - (i) the Customer shall notify the Supplier of such concerns, stating its reasons;
  - (ii) the Supplier shall have four (4) Working Days or such other reasonable period as the Parties shall agree in which to investigate matters stated in the notice and discuss its findings with the Customer; and
  - (iii) following such discussion, if the Customer is not satisfied and nevertheless requires replacement of the Subcontractor, the Supplier shall (in accordance with a plan (including a reasonable timetable) agreed between the Parties) cease using such Subcontractor to provide the Services and shall implement the plan to ensure that the Services continue to be fulfilled.
- (b) For the avoidance of doubt, the Customer will not have the right under Section 3.4(a) to require the Supplier, or any Subcontractor, to terminate a member of the Supplier Personnel's employment.
- (c) The reference to "concerns about performance" in Section 3.4(a) above shall include in the case of a Subcontractor:
  - (i) where the significant non-fulfilment by the Subcontractor of obligations relating to the payment of taxes in the United Kingdom or other jurisdiction in which the Subcontractor is incorporated or subject brings the Customer into disrepute; and

- (ii) where the Subcontractor or any person associated with it has in place arrangements involving the use of offshore companies or other offshore entities the main purpose or one of the main purposes of which is to achieve a reduction in United Kingdom tax of any description which would otherwise be payable by it or them on the payments made by the Supplier to the Subcontractor under the relevant subcontract in connection with the Agreement).
- (d) The exercise by the Customer of its rights under Section 3.4(a) in the circumstances described in this Section 3.4, shall be subject to the impact of the replacement of the relevant Subcontractor (including any termination or breakage costs payable to the relevant Subcontractor) having been discussed and agreed in accordance with the Change Control Procedure.

## ANNEX 14-1

## KEY POSITIONS

## PART I

## KEY SUPPLIER POSITIONS

| Key Supplier Position           | Name            | Notes |
|---------------------------------|-----------------|-------|
| Client Managing Director (HMRC) | <i>Redacted</i> |       |
| Head of Commercial              | <i>Redacted</i> |       |
| Head of Finance                 | <i>Redacted</i> |       |
| Service Delivery Executive      | <i>Redacted</i> |       |
| Chief Technical Architect       | <i>Redacted</i> |       |
| Head of Security                | <i>Redacted</i> |       |

## PART II

## KEY CUSTOMER POSITIONS

| Key Customer Position                                      | Name            | Notes |
|------------------------------------------------------------|-----------------|-------|
| Chief Digital and Information Officer                      | <i>Redacted</i> |       |
| Chief Operating Officer and Financial Director             | <i>Redacted</i> |       |
| Chief Information Officer: Customer Services               | <i>Redacted</i> |       |
| Chief Information Officer: Customer Compliance             | <i>Redacted</i> |       |
| Chief Information Officer: Corporate Services              | <i>Redacted</i> |       |
| Chief Information Officer: Customers Strategy & Tax Design | <i>Redacted</i> |       |



| Key Customer Position                             | Name            | Notes                             |
|---------------------------------------------------|-----------------|-----------------------------------|
| Programme Director, CDS                           | <i>Redacted</i> |                                   |
| Programme Director: Securing Our Technical Future | <i>Redacted</i> |                                   |
| Head of Architecture & Innovation                 | <i>Redacted</i> |                                   |
| Director of Security and Information              | <i>Redacted</i> |                                   |
| Head of Enterprise Platform Services (EPS)        | <i>Redacted</i> |                                   |
| Head of Application Platform Services             | <i>Redacted</i> |                                   |
| IT Commercial Director                            | <i>Redacted</i> |                                   |
| IT Contract Manager                               | <i>Redacted</i> |                                   |
| CHIEF TDA – Networks                              | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF Design Lead                                 | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF Design                                      | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF IES Development Lead                        | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF IES Database Lead                           | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF IES Test Lead                               | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF IES Tester                                  | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF Networks Support (P/T)                      | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF IES Developer                               | <i>Redacted</i> | Key Refresh<br>Customer Personnel |
| CHIEF IES Operations Support                      | <i>Redacted</i> | Key Refresh<br>Customer Personnel |



**ANNEX 14-2****NON-DISCLOSURE UNDERTAKING****COMPANY/PARTNERSHIP/SUBCONTRACTOR**

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

**BETWEEN:**

- (1) [name and address of disclosing party] ("**HMRC**"); and
- (2) [name and address of disclosee] ("**Disclosee**").

**NOW THIS DEED WITNESSETH:****WHEREAS:**

- (A) Disclosee may, in the course of its business, have communicated to it certain "Confidential Information" belonging to HMRC which is proprietary and must be held in confidence.
- (B) In this Deed, "**Confidential Information**" shall mean all Customer Data and all such other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of HMRC (whether or not designated as "confidential information" by either party) together with all information derived from the foregoing) and "**Customer Data**" shall mean information about any taxpayer or benefits recipient.
- (C) Any Confidential Information, whether contained in original or copy documents, will at all times remain the property of HMRC together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

**WE HEREBY UNDERTAKE THAT:**

- (1) Disclosee will hold in confidence all Confidential Information, and any Confidential Information supplied will not be used by Disclosee for any purpose other than the performance of [      ], without the prior written permission of HMRC.
- (2) Disclosee will take all reasonable steps to minimise the risks of disclosure of the Confidential Information and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such Confidential Information.
- (3) Disclosee will not, without the written consent of HMRC, disclose any Confidential Information or any part thereof to any third party, save to such of its employees as require such information in connection with [      ], provided that Disclosee will ensure that all such employees will sign confidentiality agreements themselves in the form of the Employees' Non-disclosure Undertaking attached hereto.

- (4) Disclosee shall inform its employees who have access to Confidential Information that breach of the obligations set out herein shall be a cause of disciplinary proceedings, and Disclosee shall institute and enforce such disciplinary proceedings as Disclosee considers (acting reasonably) to be appropriate in the circumstances.
- (5) All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to HMRC upon request or upon completion of the task for the purposes of which such Confidential Information was released.
- (6) The Confidential Information will not be used by Disclosee for any purpose or in any way other than under this Undertaking.
- (7) The obligations set out herein shall not apply to any Confidential Information where Disclosee can show that:
- (a) such information has entered the public domain without default on the part of Disclosee; or
  - (b) such information was in its possession prior to the date of disclosure; or
  - (c) such information was acquired by Disclosee from a third party who did not acquire it in confidence; or
  - (d) a disclosure is expressly authorised by any subsequent agreement between the parties; or
  - (e) such information was published or can otherwise be shown to be in the public domain prior to the date of this Undertaking,
- provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of HMRC.
- (8) The obligation expressed in this Undertaking shall continue until HMRC consents to release the Disclosee from that obligation in writing (agreement to such release not to be unreasonably withheld).

**SIGNED AND DELIVERED** for and on )  
 behalf of **HMRC** )  
 in the presence of: )

**SIGNED AND DELIVERED** for and on )

behalf of )  
[a Director and by )  
a Director/the Secretary of the said )  
Disclosee] [a partner of Disclosee] )  
[the named individual] in the presence of: )

**ANNEX 14-3****NON-DISCLOSURE UNDERTAKING****EMPLOYEE OF COMPANY OR SUB-CONTRACTOR**

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

**BETWEEN:**

- (1) [name and address of disclosing party] ("**HMRC**"); and
- (2) [name and address of disclosee] ("**Disclosee**").

**WHEREAS:**

- (A) I, [      ] of [      ], an employee of [employer] understand that during the course of my employment I may obtain information belonging to HMRC or concerning HMRC and its business which is proprietary to HMRC and is supplied in confidence.
- (B) In this Deed, "**Confidential Information**" shall mean all Customer Data and all such other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of HMRC (whether or not designated as "confidential information" by either party), together with all information derived from the foregoing) and "**Customer Data**" shall mean information about any taxpayer or benefits recipient.
- (C) Any Confidential Information, whether contained in original or copy documents, will at all times remain the property of HMRC together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

**I HEREBY UNDERTAKE THAT:**

- (1) I will keep secret and in confidence all Confidential Information, and any Confidential Information supplied will not be used by me for any purpose other than the performance of my duties of employment.
- (2) I will not disclose any Confidential Information or any part thereof to any third party.
- (3) I acknowledge that breach of the obligations set out in this Undertaking could result in the initiation of disciplinary proceedings by my employer.
- (4) The obligation expressed in this Undertaking shall continue until HMRC consents to release me from that obligation in writing (agreement to such release not to be unreasonably withheld).
- (5) All documents containing such information in my possession will be returned to the employer at the end of my employment or at any time on request by the employer.

**SIGNED, SEALED** )

**AND DELIVERED** )

**BY THE AFORESAID** )

[ ] )

**ANNEX 14-4****CONFIDENTIALITY DECLARATION**

CONTRACT REFERENCE: [for Supplier to insert Contract reference number and contract date] ('the Agreement')

DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Customer Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Customer Data provided to me.

SIGNED:

FULL NAME:

POSITION:

COMPANY:

DATE OF SIGNATURE:



## ANNEX 14-5

### PROTECTED SUPPLIER PERSONNEL AND TUPE

#### 1 DEFINITIONS

1.1 In this Annex 14-5, unless the context otherwise requires, the following expressions shall have the following meanings:

|                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Additional Protected Supplier Personnel"</b> | means with respect to the Protected Supplier Personnel as were initially assigned to those Services under this Agreement in accordance with a Trigger 1 Event, Trigger 2 Event or Trigger 3 Event, any other Supplier Personnel assigned to those same Services from time to time.                                                                                                                                                                                                            |
| <b>"Beckmann Liabilities"</b>                    | has the meaning given in Section 6.4 below.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"In-Scope Supplier Personnel"</b>             | means any Protected Supplier Personnel and any Additional Protected Personnel.                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"In-Scope Supplier Personnel List"</b>        | means those In-Scope Supplier Personnel who spend more than 50% of their working time dedicated wholly or mainly to the Relevant Services and who are listed, such list to be agreed between the Parties as determined in accordance with the procedures set out at Section 5.1(a) to 5.1(c) and amended to remove any person whose employment terminates or who is redeployed by the Supplier (other than to services under the Prime Agreement) before the Relevant Services Transfer Date. |
| <b>"Final Supplier Personnel List"</b>           | means the list of In-Scope Supplier Personnel as determined in accordance with the procedures set out at Section 5.1(a) to 5.1(c).                                                                                                                                                                                                                                                                                                                                                            |
| <b>"Loss" or "Losses"</b>                        | means all directly incurred losses, liabilities, damages and claims and all related costs, expenses and payments made to third parties (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).                                                                                                                                                                                                              |
| <b>"Prime and Chief Employee Protections"</b>    | means any and all personnel protections available to the Supplier on exit or service removal set out in the Prime Agreement or CHIEF Agreement, including but not limited to where TUPE does not apply on exit or service removal.                                                                                                                                                                                                                                                            |
| <b>"Protected Supplier Personnel"</b>            | means those Supplier Personnel: <ul style="list-style-type: none"> <li>(a) redeployed by the Supplier from either the Prime Agreement or CHIEF Agreement to this Agreement; or</li> <li>(b) employed by the Supplier,</li> </ul> under a Trigger 1 Event, Trigger 2 Event or Trigger 3 Event.                                                                                                                                                                                                 |

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Redundancy Costs"</b>                   | means any wages for no longer than six (6) weeks after the Relevant VPaaS Services Transfer Date or such longer period as is expressly agreed in writing by the Supplier, any contractual notice payments or payments in lieu of notice, any holiday pay or pay in lieu of holiday pay, any statutory or contractual redundancy payments (except to the extent that any contractual entitlements were agreed with the In-Scope Supplier Personnel by the Successor Supplier after the Relevant Services Transfer Date).                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Relevant Services"</b>                  | means those Services subject to a Supplier Personnel Affecting Event.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Relevant Services Transfer Date"</b>    | means the date on which the Relevant Services cease to be within the scope of the Agreement (either by way of transfer to a Successor Supplier or otherwise).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Supplier Personnel Information"</b>     | means: <ul style="list-style-type: none"> <li>(a) a unique identifier or role; employer's name; place(s) of work; age; length of service; job title and/or grade;</li> <li>(b) salary (including the interval at which paid) and other remuneration and benefits, including entitlement to pension, death in service benefits, holidays, public holidays and holiday pay and enhanced redundancy terms;</li> <li>(c) all other material terms and conditions of employment, including hours of work, notice periods and terms relating to sick pay or other leave-related entitlements;</li> <li>(d) details of all applicable collective bargaining agreements, recognition agreements, partnership agreements or workforce agreements with a trade union, staff association or similar organisation; and</li> <li>(e) details of any grievance or actual or potential employment claim in the previous two years.</li> </ul> |
| <b>"Supplier Personnel Records"</b>         | means copies of personnel records (including contractual documents such as original offer of employment, contract and subsequent updates); the most recent employee appraisal with training plan (to the extent completed); any promises of promotion or other such obligations and any unexpired disciplinary documentation; absence records for the preceding 24 months (to the extent that such information is recorded); copy payroll records including earned but unpaid overtime and premium pay, call out, stand-by allowances and payments; and outstanding expenses incurred but not reimbursed.                                                                                                                                                                                                                                                                                                                      |
| <b>"Supplier Personnel Affecting Event"</b> | means the Customer giving notice, or the Supplier becoming aware, of:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

- (a) a lawful termination in accordance with the terms of this Agreement, or other lawful exit (in whatever form), of the Agreement; or
- (b) any other impact on the Services arising from a Customer reduction in demand permitted under this Agreement which includes any series of circumstances or events which individually do not constitute a Supplier Personnel Affecting Event but which taken together fall under this limb (b).

**"Termination Date"**

means the effective date of Termination of the Agreement as specified in a notice of Termination given in accordance with the Terms and Conditions, or the expiry date of the Agreement.

**"Transfer"**

means a relevant transfer in accordance with regulation 3 of TUPE.

**"Trigger Entry Date"**

means the date from which the Protected Supplier Personnel provide services to the Customer under this Agreement, including any such personnel who transfer from either the Prime Agreement or CHIEF Agreement and instead provide services to the Customer under this Agreement as a result of a Trigger Event.

**"Trigger 1 Event"**

has the meaning given in Section 2.1(b).

**"Trigger 2 Event"**

has the meaning given in Section 2.1(c).

**"Trigger 3 Event"**

has the meaning given in Section 2.1(d).

**"Trigger Event"**

means one or more of Trigger 1 Event, Trigger 2 Event or Trigger 3 Event.

**"TUPE"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

## **2 PROTECTED SUPPLIER PERSONNEL**

### **2.1 Trigger Events**

- (a) Supplier Personnel deployed to the Services shall on the Relevant Services Transfer Date be subject to:
  - (i) Section 4 of this Annex 14-5 if those persons are deployed to the Services pursuant to a Trigger Event from the start of the first month in which the Prime Charges Element is levied;
  - (ii) Section 5 of this Annex 14-5 if those persons are deployed to the Services pursuant to a Trigger Event prior to the levy of the Prime Charges Element; and

- (iii) such provisions as shall be expressly agreed between the Parties from time to time if such persons are not deployed to the Services pursuant to a Trigger Event.
- (b) A Trigger 1 Event refers to any event that arises from:
  - (i) Supplier Personnel being no longer assigned to services removed from either the Prime Agreement or the CHIEF Agreement on termination of the services provided pursuant to Schedule 35 to the Prime Agreement and pursuant to the whole of the CHIEF Agreement; and
  - (ii) results in such Supplier Personnel being redeployed so that they provide Services under this Agreement.
- (c) A Trigger 2 Event refers to any event that results in any additional Supplier Personnel being required to provide the Modernisation Services pursuant to a Project(s) under this Agreement.
- (d) A Trigger 3 Event refers to any event that results in Supplier Personnel being redeployed to provide Discontinued Prime Services under this Agreement. In order for the Supplier to continue to provide Services to the Customer under this Agreement following a Prime End or Prime Reduction, there is a requirement to provide Discontinued Prime Services under this Agreement.
- (e) As Supplier Personnel are assigned to the Services pursuant to a Trigger Event, they shall become, from a Trigger Event Date, Protected Supplier Personnel. The Customer will receive the full benefit of the protections envisaged by Section 4 of this Annex 14-5 in respect of such Protected Supplier Personnel from the start of the first month in which the Prime Charges Element is levied. If the Prime Charges Element is not levied, the Customer will not receive the benefit of Section 4 and such Protected Supplier Personnel shall instead be subject to Section 5 of this Annex 14-5.
- (f) If there are any Supplier Personnel required to provide services under this Agreement other than the Services expressly referred to in a Trigger Event, the status of such persons will need to be agreed by the Parties at the relevant time and such persons shall not qualify as Protected Supplier Personnel unless expressly agreed by the Parties.
- (g) The Parties acknowledge and accept that Prime and CHIEF Employee Protections shall not apply to any Protected Supplier Personnel or Additional Protected Supplier Personnel including in particular:
  - (i) clause 12 of the Prime Agreement and Annex 9-8 of Schedule 9 to that agreement; and
  - (ii) Schedule 9.1 to the CHIEF Agreement.
- (h) The Supplier shall not redeploy the Protected Supplier Personnel or Additional Protected Supplier Personnel to the Prime Agreement except with the express written consent of the Customer. For the avoidance of doubt, the Supplier shall not be entitled to redeploy Protected Supplier Personnel or Additional

Protected Supplier Personnel to the Prime Agreement in accordance with Section 4.3 of this Annex 14-5.

- (i) The Supplier shall be responsible for the employment and/or termination costs of employment of any Protected Supplier Personnel and Additional Protected Supplier Personnel under this Agreement if those persons are not transferred to the Customer and/or a Successor Supplier in accordance with TUPE, including but not limited to any wages, benefits, contractual or statutory liabilities.

### **3 APPLICATION OF TUPE ON EXIT**

The Parties acknowledge and accept that the Customer may appoint a Successor Supplier (including the Customer itself) to provide services in replacement of the Relevant Services on or after the Relevant Services Transfer Date. The Parties acknowledge and accept that while they are not expecting TUPE to apply as a result of a Supplier Personnel Affecting Event, this is a question of law and fact that will need to be determined at the time of the Relevant Services Transfer Date. If TUPE does apply at the time of the Relevant Services Transfer Date, this may result in the transfer of the In-Scope Supplier Personnel to the Customer and/or the Successor Supplier in accordance with TUPE and the Parties accept that, as a consequence, the contract of employment of each of the In-Scope Supplier Personnel shall have effect from and after the Relevant Services Transfer Date as if originally made between such In-Scope Supplier Personnel and the Customer and/or Successor Supplier. For the avoidance of doubt, the Supplier reserves the right to contend that by reason of the Supplier's Intellectual Property Rights and the nature of the VPaaS Services it would not be possible in respect of the VPaaS Services for a Successor Supplier to be appointed in respect of some or all of the VPaaS Services.

### **4 EXIT AFTER PRIME CHARGES ELEMENT LEVIED**

#### **4.1 Information and Consultation Obligations**

- (a) As soon as possible (acting reasonably) prior to the Relevant Services Transfer Date, the Supplier shall provide the Customer and Successor Supplier with such information as it is required to provide in accordance with its obligations under TUPE, including providing the Customer and Successor Supplier with a list of In-Scope Supplier Personnel wholly or mainly assigned to the Relevant Services and such information as is required by regulation 11 of TUPE as soon as possible and at least twenty eight (28) days prior to the Relevant Services Transfer Date.
- (b) The Supplier and the Customer agree to, and the Customer agrees to use Commercially Reasonable Efforts to procure that the Successor Supplier will, comply fully, and to provide all reasonable assistance to each other, with all of their respective obligations under TUPE including their obligations regarding consultation and the giving of information under regulation 13 of TUPE and any pre-transfer collective consultation.
- (c) At the reasonable request of the Supplier, the Customer shall, and shall use Commercially Reasonable Efforts to procure that the Successor Supplier shall, send representatives to attend and participate in formal meetings held prior to each Relevant Services Transfer Date at which information is given to, or there

is consultation with, In-Scope Supplier Personnel wholly or mainly assigned to the Relevant Services and their representatives, and/or where the TUPE transfer is, or may reasonably be expected to be, discussed.

- (d) The Customer shall, and shall use Commercially Reasonable Efforts to procure that the Successor Supplier shall, jointly communicate with the Supplier to the In-Scope Supplier Personnel wholly or mainly assigned to the Relevant Services (as appropriate) in relation to the transfer of their employment, using a notice in a form to be agreed between the relevant parties before the Relevant Services Transfer Date.

#### 4.2 **HR and administrative support and assistance**

The Supplier shall provide the Successor Supplier and Customer with reasonable HR and administrative support and assistance so that the Customer and the Successor Supplier can discharge their information and consultation obligations (as applicable) under TUPE and implement redundancies under this Section 4. The Customer shall use Commercially Reasonable Efforts to procure that the Successor Supplier co-operates with the Supplier in providing such support and assistance.

#### 4.3 **In-Scope Supplier Personnel and Indemnities**

- (a) Indemnities on Transfer of In-Scope Supplier Personnel
  - (i) The Supplier agrees with the Customer to indemnify the Customer and keep the Customer indemnified against all Losses arising (directly or indirectly) out of or relating to any Claim:
    - (A) by or on behalf of any In-Scope Supplier Personnel which arises or is alleged to arise as result of any act or omission by the Supplier whether the act or omission or effect of such act or omission occurs before, on, or after the Relevant Services Transfer Date;
    - (B) by or on behalf of any In-Scope Supplier Personnel arising out of a failure by the Supplier to comply with its legal obligations under TUPE, including its obligations regarding consultation and the giving of information; save to the extent that such failure arises as a result of a failure by the Customer or Successor Supplier (as applicable) to comply with its legal obligations under TUPE;
    - (C) by or on behalf of any employee or former employee of the Supplier who alleges that he or she should have transferred to the Customer or any Successor Supplier in accordance with the terms of this Agreement and who the Supplier failed to identify as In-Scope Supplier Personnel wholly or mainly assigned to the Relevant Services (for whatever reason, including by reason of re-deployment within the Supplier) to the Customer or Successor Supplier prior to the Relevant Services Transfer Date and who the Customer and Successor Supplier may dismiss and the Supplier shall indemnify the Customer and Successor Supplier

for all Losses arising directly or indirectly out of or relating to any Claim connected to such dismissal subject to Section 6.3;

- (D) resulting from the particulars of employment of the In-Scope Supplier Personnel provided to the Customer and any Successor Supplier being in any respect materially inaccurate, incomplete or out-of-date as at the date such particulars are given; and
- (E) by or on behalf of any In-Scope Supplier Personnel who are dismissed on the grounds of redundancy by the Customer or a Successor Supplier within six (6) weeks of the Relevant Services Transfer Date (or such longer period as is expressly agreed in writing by the Supplier) including any Beckmann Liabilities provided that the Customer has, and has used Commercially Reasonable Efforts to procure that any Successor Supplier has, complied with the requirements of Section 4.3(b) and Section 6.3 below.

(b) Redundancy costs

- (i) The Supplier shall on request be obliged to promptly reimburse the Customer and/or Successor Supplier with the Redundancy Costs incurred by the Customer and/or any Successor Supplier in relation to any In-Scope Supplier Personnel who transfers to the Customer or Successor Supplier under TUPE provided that:
  - (A) the Customer has notified the Supplier in writing about any planned exit from the agreement or any other impact on the Services as soon as reasonably possible so that the Supplier has the opportunity of redeploying In-Scope Supplier Personnel prior to the Relevant Services Transfer Date;
  - (B) the Customer or Successor Supplier gives five working days' notice to the Supplier that it proposes to terminate the employment of any In-Scope Supplier Personnel on the grounds of redundancy; and
  - (C) such In-Scope Supplier Personnel are dismissed on the grounds of redundancy by a Successor Supplier or the Customer within 6 weeks of the Relevant Services Transfer Date, (or such longer period as is expressly agreed in writing by the Supplier). The Supplier agrees to allow the Customer or Successor Supplier to conduct pre-transfer collective redundancy consultation subject to the Customer and/or Successor Supplier agreeing to a legally binding agreement with the Supplier relating to each party's rights and obligations during such collective redundancy consultation exercise (such agreement not to be unreasonably withheld or delayed).

## **5 EXIT BEFORE THE PRIME CHARGES ELEMENT IS LEVIED**

### **5.1 Final Supplier Personnel List**

- (a) The Parties shall agree the provisional list of In-Scope Supplier Personnel in accordance with the following process:
  - (i) the Supplier will provide to the Customer the list of In-Scope Supplier Personnel in a suitably anonymised format no later than nine (9) months prior to the applicable Relevant Services Transfer Date (or, if nine (9) months' notice prior to each Relevant Services Transfer Date cannot be given to the Supplier by the Customer, as soon as is reasonably practicable once the Supplier has received such shorter notice); and
  - (ii) the Supplier will provide an anonymised list of In-Scope Supplier Personnel at least six (6) months prior to the Relevant Services Transfer Date (or, if six (6) months' notice prior to each Relevant Services Transfer Date cannot be given to the Supplier by the Customer, as soon as is reasonably practicable once the Supplier has received such shorter notice) (the "**Provisional Supplier Personnel List**").
- (b) Using the Provisional Supplier Personnel List as a basis, the Customer and the Supplier shall discuss and agree the final list of In-Scope Supplier Personnel and as soon as reasonably practicable and in any event no later than three (3) months prior to the applicable Relevant Services Transfer Date (or, if three (3) months' notice prior to each Relevant Services Transfer Date cannot be given to the Supplier by the Customer, as soon as is reasonably practicable once the Supplier has received such shorter notice). If the Parties are unable to reach agreement, the Parties acknowledge and accept that the final list of In-Scope Supplier Personnel shall be those persons identified in the Provisional Supplier Personnel List.
- (c) The final list referred to in Section 5.1(b) above shall be reviewed and finalised immediately before each Relevant Services Transfer Date by the Supplier and the Customer.

## 5.2 Information and Consultation Obligations

- (a) The Supplier and the Customer agree to, and the Customer agrees to use Commercially Reasonable Efforts to procure that the Successor Supplier will, comply fully, and to provide all reasonable assistance to each other, with all of their respective obligations under TUPE including their obligations regarding consultation and the giving of information under regulation 13 of TUPE.
- (b) The Supplier shall consult with and keep the Customer informed, and, where requested, keep the Successor Supplier fully informed regarding any information it proposes to give to, or any consultation it has with the In-Scope Supplier Personnel, their representatives and trade unions prior to the applicable Relevant Services Transfer Date.
- (c) The Customer and the Successor Supplier shall be offered the opportunity to attend and participate in formal meetings held prior to each Relevant Services Transfer Date at which information is given to, or there is consultation with,



In-Scope Supplier Personnel and their representatives, and/or where the TUPE transfer is, or may reasonably be expected to be, discussed (including meetings specifically held as part of the consultation process and that part of any other group meetings with staff where the TUPE transfer is reasonably expected to form a significant item for discussion).

- (d) the Customer and/or the Successor Supplier shall jointly communicate with the Supplier to the In-Scope Supplier Personnel (as appropriate) in relation to the transfer of their employment, using a notice in a form to be agreed between the relevant parties before the Relevant Services Transfer Date.
- (e) Three (3) months prior to the Relevant Services Transfer Date (or, if three (3) months' notice prior to each Relevant Services Transfer Date cannot be given to the Supplier by the Customer, as soon as is reasonably practicable once the Supplier has received such shorter notice), the Supplier shall provide (or shall have provided) to the Customer the Supplier Personnel Information in respect of each In-Scope Supplier Personnel. Following the Supplier's provision of the Supplier Personnel Information to the Customer pursuant to this Section 5.2(e), if there is any material change to that Supplier Personnel Information then the Supplier shall inform the Customer of such change as soon as possible. On or within twenty-eight (28) days after the Relevant Services Transfer Date, the Supplier shall provide the Customer with the Supplier Personnel Records relating to each In-Scope Supplier Personnel.
- (f) As soon as possible and not later than twenty-eight (28) days prior to the Relevant Services Transfer Date, the Supplier shall provide to the Customer or the Successor Supplier sufficient information to allow the Successor Supplier to establish a mirror payroll system. No later than twenty-eight (28) days following the Relevant Services Transfer Date, the Supplier shall provide to the Customer or the Successor Supplier updated payroll information following the final payroll run, and relevant tax and statutory details in relation to any In-Scope Supplier Personnel.
- (g) The Supplier shall fully and promptly co-operate in good faith with all reasonable requests of the Customer to procure the smooth transfer to the Customer or Successor Supplier of the In-Scope Supplier Personnel, who transfer to the Customer or a Successor Supplier.

### 5.3 Indemnities on Transfer of In-Scope Supplier Personnel

- (a) If there is Relevant Services Transfer Date before the Prime Charges Element is levied, the Supplier agrees with the Customer to indemnify the Customer and keep the Customer indemnified against all Losses arising (directly or indirectly) out of or relating to any Claim:
  - (i) by or on behalf of any In-Scope Supplier Personnel which arises or is alleged to arise as result of any act or omission by the Supplier (including where the consequences of such act or omission does not take effect to an In-Scope Supplier Personnel's employment prior to the Relevant Services Transfer Date) relating to the In-Scope Supplier Person's employment prior to the Relevant Services Transfer Date;

- (ii) by or on behalf of any employee or employee representative of the Supplier, the Customer or any Successor Supplier arising out of a failure by the Supplier to comply with its legal obligations under TUPE, including its obligations regarding consultation and the giving of information; save to the extent that such failure arises as a result of a failure by the Customer or a Successor Supplier to comply with their legal obligations under TUPE;
  - (iii) by or on behalf of any employee or former employee of the Supplier who alleges that he or she should have transferred to the Customer or any Successor Supplier in accordance with the terms of this Agreement and who the Supplier failed to identify as an In-Scope Supplier Personnel (for whatever reason, including by reason of re-deployment within the Supplier) to the Customer or Successor Supplier prior to the Relevant Services Transfer Date;
  - (iv) by or on behalf of any employee or former employee of the Supplier resulting from any inaccuracies or omissions in the information provided by the Supplier in respect of the identity of individuals on the Final Supplier Personnel List, which has the effect that the Final Supplier Personnel List includes details of individuals who are not wholly or mainly engaged in providing services in fulfilment of the Relevant Services as at the Relevant Services Transfer Date and whose employment may be dismissed by the Customer or the Successor Supplier; and
  - (v) resulting from the particulars of employment of the In-Scope Supplier Personnel provided to the Customer and any Successor Supplier being in any respect materially inaccurate, incomplete or out-of-date as at the date such particulars are given.
- (b) If there is Relevant Services Transfer Date before the Prime Charges Element is levied, the Customer shall indemnify and keep the Supplier indemnified against all Losses arising out of or relating to any Claim:
  - (i) by any employee or employee representative of the Customer, any Successor Supplier or the Supplier, arising out of a failure by the Customer or the Successor Supplier to comply with their legal obligations under TUPE, including their obligations regarding consultation and the giving of information, save to the extent that such failure arises as a result of a failure by the Supplier to comply with its legal obligations under TUPE;
  - (ii) by or on behalf of any member or former member of the In-Scope Supplier Personnel arising from the resignation of such person on or before the Relevant Services Transfer Date by reason of or related to detrimental changes to his working conditions or terms and conditions of employment which are proposed or recommended by the Customer or the Successor Supplier to take effect on or after the Relevant Services Transfer Date; or

- (iii) subject to Section 5.3(a)(v) above, by any In-Scope Supplier Personnel who accepts employment with the Customer or a Successor Supplier which arises or is alleged to arise as a result of any act or omission by the Customer or a Successor Supplier relating to such In-Scope Supplier Personnel's employment on or after the Relevant Services Transfer Date.

## **6 GENERAL CONDITIONS**

### **6.1 Assignment**

The Parties acknowledge and accept that it is their intention that the benefit of Section 4 and 5 above shall be assigned to the Successor Supplier at the absolute discretion of the Customer, and the Supplier agrees to use Commercially Reasonable Efforts to do all acts and things reasonably necessary to give effect to such assignment including execution of all documents required.

### **6.2 Transferee Obligations**

- (a) The Parties acknowledge and accept that:
  - (i) the Customer shall only be required to send representatives to an information and consultation meeting or make a joint communication to In-Scope Supplier Personnel under Section 4.1 only if it is a transferee and shall only be required to procure that the Successor Supplier attends such a meeting or makes such a joint communication under this provision only if the Successor Supplier is a transferee;
  - (ii) the Supplier shall provide HR and administrative support and assistance to the Customer and Successor Supplier under Section 4.2 as applicable depending on which of those parties is acting as transferee;
  - (iii) the Customer shall only be required to make a joint communication to In-Scope Personnel under Section 5.2(d) only if it is a transferee and shall only be required to procure that the Successor Supplier makes such a joint communication under this provision only if the Successor Supplier is a transferee; and
  - (iv) for the purpose of this Annex 14-5, transferee shall have the same meaning as defined under TUPE.

### **6.3 Claims Handling**

- (a) If a Claim is made against or in relation to a Party, which by virtue of this Annex 14-5 is an indemnifying party, the indemnifying party is liable to indemnify the indemnified party, and the indemnified party shall:
  - (i) take such reasonable steps and provide at the indemnified party's expense such reasonable assistance as the indemnifying party may reasonably require in relation to such Claim;
  - (ii) preserve and not waive legal professional privilege or other privilege attaching to any of the records, documents or other information in

relation to such Claim without the prior consent of the indemnifying party (not to be unreasonably withheld or delayed);

- (iii) make any admission of liability without the prior consent of the indemnifying party, such consent not to be unreasonably withheld or delayed; and
- (iv) not enter into any binding agreement or arrangement to settle such Claim without the prior consent of the indemnifying party, such consent not to be unreasonably withheld or delayed.

#### 6.4 Beckmann Liabilities

- (a) The Parties acknowledge and accept that pension benefits which do not relate to benefits for old age, invalidity or survivors may be capable of transferring under TUPE. If any In-Scope Supplier Personnel have such benefits and are subject to Section 4.3(a)(i)(E) of this Annex 14-5, the following process shall be followed by the Parties:
  - (i) The Customer shall, and shall use Commercially Reasonable Efforts to procure that the Successor Supplier (if applicable) shall, exercise any hypothetical discretion relating to those benefits under the relevant pension scheme in good faith after first consulting with the Supplier and taking into account any representations that the Supplier may make in relation to the exercise of that discretion (not to be unreasonably withheld or delayed).
  - (ii) The Supplier shall (at its own expense) promptly instruct an actuary to advise on the appropriate cash value of those benefits based on the relevant pension documentation at the relevant time.
  - (iii) The Supplier shall promptly pay the Customer and/or the Successor Supplier the gross cash value of the benefits calculated by an actuary in accordance with this Section 6.4(a)(ii).
  - (iv) The Customer shall on receipt, and shall use Commercially Reasonable Efforts to procure that the Successor Supplier shall on receipt, promptly pay the In-Scope Supplier Personnel the cash value of the early retirement benefits less any applicable deductions for tax and national insurance contributions.
  - (v) The Supplier shall indemnify and keep indemnified the Customer and/or the Successor Supplier against all Losses arising (directly or indirectly) out of or relating to any Claim by any In-Scope Supplier Personnel that their pension benefits should have been given a cash value that is higher than the amount calculated by an actuary and paid to the Customer and/or the Successor Supplier in accordance with Section 6.4(ii) and Section 6.4(iii) and in turn paid to such In-Scope Supplier Personnel in accordance with Section 6.4(iv).

#### 6.5 TUPE Dispute Resolution

If there is a dispute between the Parties about the application of TUPE under this Agreement, the Parties shall negotiate in good faith to seek to reach agreement on the issues. If the Parties are unable to reach agreement on those issues, they shall jointly instruct an appropriately qualified independent barrister who shall provide a binding opinion on the Parties. The choice of barrister shall be agreed between the Parties and the legal costs shall be shared equally.

**ANNEX 14-6**  
**SECONDMENT**

**SECONDMENT AGREEMENT - FORM A**

SECONDMENT OF [ ] ("**Secondee**")  
FROM The HMRC  
TO [Supplier]

This agreement is made between:

1. The Commissioners of the HMRC (the "**HMRC**"); and
2. [**Name of organisation**] ("**The Contractor**");

**1 PURPOSE OF THE AGREEMENT**

- 1.1 The HMRC agrees to second [**name**] ("**The Secondee**") to the Contractor. The Contractor shall assign the Secondee to the duties set out at Annex 1, which shall form part of this agreement.

**2 DURATION OF THE AGREEMENT**

- 2.1 The period of secondment will commence on [**date**] and subject to earlier termination of the agreement in accordance with Clauses 25-27 below, shall end on [**date**].

**3 TERMS AND CONDITIONS**

- 3.1 The Secondee shall remain an employee of the HMRC during the period of secondment and shall retain conditions of service as an established Civil Servant. Some of these terms and conditions are set out below.
- 3.2 The HMRC shall retain all the normal duties and other legal responsibilities of an employer for the Secondee, but the Contractor shall comply with all the relevant requirements contained or having effect under the legislation relating to health, safety and welfare at work.
- 3.3 The Secondee shall continue to be covered by the provisions of the Principal Civil Service Pension Scheme.
- 3.4 The Contractor shall not approach the Secondee with an offer to take up a permanent appointment during the period of secondment nor for a period of two years thereafter.
- 3.5 The Secondee shall be based at:  
  
[**address**]
- 3.6 The Secondee shall report to [**name of line manager**] at the address shown in paragraph 9 on [**date**] who shall be responsible for all aspects of the control and direction of the Secondee's work during the period of secondment. The Contractor shall bear the liability for any negligent act of the Secondee during the course of his/her work for the Contractor.
- 3.7 The Contractor shall be liable for any act of the Secondee during the course of his/her work for the Contractor which gives rise to legal liability.

The Contractor shall bear the liability for any negligent act of the Secondee during the

course of \*his/her work for the Contractor.

The standard flexible hours of work for the Seconded are 37/42\* per week. The hours of work shall be 7.24 on each weekday with 1 hour for lunch. In the event that additional hours are required, the Contractor and the Seconded will agree the hours to be worked in accordance with terms of the Working Time Regulations. The Contractor and Seconded will agree whether payment for extra time worked or time off in lieu is made. The Contractor agrees that the Seconded must take any time off in lieu granted before the end of the period of the secondment.

#### **4 FINANCIAL ARRANGEMENTS**

- 4.1 For the duration of the secondment the Seconded will continue to have \*his/her normal Civil Service salary paid by the HMRC. The HMRC will also pay employer's National Insurance Contribution.
- 4.2 ***[NB include here details of any reimbursements to be made in the terms of "The Contractor will reimburse the HMRC the full costs of salary, ERNIC and Superannuation costs as detailed in Annex 2]***

#### **5 EXPENSES**

- 5.1 Expenses incurred by the Seconded in carrying out \*his/her duties on secondment (i.e., travelling to and from a site) will be reimbursed direct to the Seconded by the Contractor at the rate at which the Contractor reimburses the expenses of the Contractor's employees. The Contractor will reimburse the Seconded for all travel and other expenses properly and reasonably incurred in the performance of his/her duties for the Contractor, and properly claimed and vouched for to the Contractor at the rate at which the Contractor reimburses the expenses of the Contractor's employees.

#### **6 HOLIDAYS**

- 6.1 The Seconded's leave allowance will be in accordance with the HMRC's usual terms and subject to any amendment which may be agreed thereto in future for non-industrial Civil servants. The Seconded's annual leave entitlement at present is **[number]** working days. In addition, the Seconded is entitled to all public holidays (8 days) and 2½ privilege days.
- 6.2 Details of any time taken off by the Seconded through sickness are to be notified to **[executive office/division name and address]** by the Seconded and the Contractor and, in the event the Seconded supplies the Contractor with certification in respect of his/her absences, the HMRC shall be supplied by the Contractor with such medical or self-certificates as may be appropriate in relation to such absences without delay. The HMRC shall be responsible for the payment of any statutory sick pay as may be due.

#### **7 CONDUCT, DISCIPLINE, SECURITY AND CONFIDENTIALITY**

- 7.1 The Seconded will continue to be subject to the Official Secrets Acts and to the special obligation on officers of the HMRC, imposed by Section 6 Taxes Management Act 1970 and Section 182 Finance Act 1989, to safeguard the confidentiality of information held by the HMRC. The Seconded will therefore continue to conform with the Civil Service and the HMRC's rules conduct, discipline, security and confidentiality. In particular, the Seconded will need to avoid situations that may lead to conflicts of interest. The



Contractor agrees to assist the Seconded and the HMRC in ensuring that the Seconded complies with the requirements set out in this paragraph 7.

- 7.2 Subject to the above, the Seconded should conduct \*him/herself as if \*he/she were a member of the Contractor's company in following its company policies and directives. Commercial information acquired by the Seconded whilst on secondment will not be used for the HMRC's purposes.
- 7.3 The disciplinary rules applicable shall be those of the HMRC. The Contractor may ask the HMRC to institute the disciplinary proceedings and to take part in them where necessary.
- 7.4 The grievance procedures applicable shall be those of the HMRC. The HMRC will provide guidance to the Contractor in respect of these as required.

## **8 APPRAISAL**

- 8.1 The Contractor will apply the HMRC's Performance Management System throughout the period of the secondment, including 3 in-year assessments and an end of year review on 31 March.
- 8.2 For the avoidance of doubt, the terms and conditions hereof shall be subject to the terms and conditions applicable to non-industrial Civil Servants as amended from time to time.

## **9 VARIATION**

- 9.1 The terms of this agreement may only be varied by agreement in writing between persons authorised by the parties.

## **10 TERMINATION**

- 10.1 This agreement may be terminated by either party giving to the other at least one month's notice in writing.
- 10.2 The HMRC may terminate this agreement with immediate effect by giving notice in writing to the Contractor in any of the following events:
- (a) if the Seconded notifies the HMRC that he/she is not prepared to continue the secondment; or
  - (b) if the Contractor is in breach of any provisions of this agreement.
- 10.3 The Contractor may terminate this agreement with immediate effect by giving notice to the HMRC and the Seconded in writing if the Seconded:
- (a) commits any act of dishonesty or any other serious breach or non-observance of his obligations under this agreement;
  - (b) is unable to perform the duties and functions as laid out in the Annex for a period of 6 consecutive weeks during the period of the secondment;
  - (c) fails in any material respect to perform the duties and functions;
  - (d) gives notice to terminate his employment with the HMRC; or
  - (e) If the HMRC is in breach of any provisions of this agreement.

10.4 Such termination shall not affect rights, which the party so terminating the agreement may have against the other in consequence of the breach by the other party.

We, the undersigned, consent to the terms of this agreement:

Authorised to sign for and on behalf of  
name of Contractor

Authorised to sign for and on behalf of the  
HMRC

Signed :

Signed :

Name:

Name:

Date:

Date:

**SECONDMENT AGREEMENT - FORM B**SECONDMENT OF [ ] ("**Secondee**")

FROM [Supplier]

TO The HMRC

This Agreement is made the                      day of                      20[   ]

BETWEEN

- (1) [name of organisation];
- (2) The Commissioners of the HMRC of [ address of office] ("the **"HMRC"**); and
- (3) [name] ("**the Secondee**").

WHEREAS

**[name of org]** employs the Secondee in its [current employment of Secondee] and is willing to second her/him to the HMRC in that capacity.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. INTERPRETATION**

In this Agreement, the words and expressions set out below shall have the following meanings:

|                             |                                                                                                                                                                                                                                                                 |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Benefits</b>             | means the benefits (excluding the Salary and expenses) to which the Secondee is entitled in accordance with his/her Employment Agreement together with such other benefits as may from time to time be agreed in writing between the parties to this Agreement; |
| <b>Business Day</b>         | means a day (other than a Saturday or Sunday) on which banks in the City of London are generally open for business;                                                                                                                                             |
| <b>Duties and Functions</b> | means the duties and functions to be performed and exercised by the Secondee described and set out in the Schedule to this Agreement;                                                                                                                           |
| <b>Employment Agreement</b> | means the Secondee's contract of employment with <b>[name of org]</b> ; and                                                                                                                                                                                     |
| <b>Salary</b>               | means the gross salary of the Secondee to which he/she is entitled in accordance with his/her Employment Agreement.                                                                                                                                             |

**2 OBLIGATIONS OF [NAME OF ORG]**

- 2.1 **[name of org]** shall, in accordance with the provisions of this Agreement, provide the services of the Secondee to act as an [   ] for the HMRC in its [   ] office.
- 2.2 **[name of org]** shall make the services of the Secondee available exclusively to the HMRC on a full-time basis for 37.5 hours a week throughout the duration of this Agreement as specified in Clause 6.1, subject to the right of the Secondee to take holidays pursuant to his/her Employment Agreement.
- 2.3 **[name of org]** shall at all times during the Secondment:
  - (a) use its best endeavours to procure that the Secondee shall perform the Duties and Functions together with such other duties as may from time to time be agreed by the **[name of org]** and the HMRC;
  - (b) ensure that the Secondee is able to provide his/her services exclusively to the HMRC and is not required, unless agreed by the HMRC, to perform any other

services for **[name of org]** or any other person;

- (c) continue to pay to the Seconded his/her Salary and Benefits in accordance with his/her Employment Agreement;
- (d) comply with any statutes or other enactments for the time being in force including, but not limited to, the Income Tax (Employments) Regulations 1993, Social Security Contributions and Benefits Act 1992 and Social Security Administration Act 1992 in respect of the deduction of taxes and the collection of national insurance contributions levied and payable in respect of the Salary payable to the Seconded and shall account promptly to the relevant statutory authority in respect of monies so collected or deducted;
- (e) comply with any statutes or other enactments for the time being in force in respect of the employment of the Seconded;
- (f) take out and maintain full and comprehensive policies for liability insurance, professional indemnity and public liability in respect of this Secondment.

### 3. OBLIGATIONS OF THE SECONDEE

3.1 During the period of the Secondment, the Seconded shall:

- (a) perform the Duties and Functions set out in the schedule [A] to this agreement and such additional duties as may reasonably and lawfully be requested by the HMRC;
- (b) carry out the Duties and Functions and any additional duties diligently and in a timely and professional manner, and using all reasonable care and skill in doing so;
- (c) report to and be subject to the control and supervision of the HMRC's [line manager];
- (d) be subject to and bound by the terms and provisions contained or referred to in schedule [ ]/[code of conduct document attached] of this Agreement and any terms contained or referred to in the Seconded's letter of appointment.
- (e) ***[DN: a further clause can be added here either to the effect that the Seconded remains subject to the appraisal system of the organisation or to the HMRC. This will depend on the individual agreement reached.]***

### 4. OBLIGATIONS OF THE HMRC

- 4.1 In respect of the Seconded, the HMRC shall comply with all relevant requirements contained or having effect under the legislation relating to health, safety and welfare at work.
- 4.2 The HMRC shall reimburse the Seconded for all travel and other expenses properly and reasonably incurred in the performance of his/her duties for the HMRC, and properly claimed and vouched for in accordance with the HMRC's current expense reporting procedure.

***[DN: this section should also include details of the repayment being made (if any) to the seconding organisation.]***

### 5. CONFIDENTIALITY

- 5.1 Each party undertakes that they shall not, save as required by law (and then only to the extent so required), at any time after execution of this Agreement (including after

the termination of this Agreement) divulge any information in relation to the affairs or business or method of carrying on business of any other party to this Agreement which it knows or ought reasonably to know at the relevant time to be confidential and which it has learnt as a result of the negotiations leading up to or the operation of this Agreement.

- 5.2 The HMRC and the Seconded further agree and acknowledge that during the course of the Secondment, the Seconded will be subject to the Official Secrets Act and to the special obligations on Officers of the HMRC, imposed by Section 6 of the Taxes Management Act 1970 and Section 182 of the Finance Act 1989, to safeguard the confidentiality of information held by the HMRC and will sign any secrecy clause required.
- 5.3 **[name of org]** accepts and acknowledges that any information provided to the Seconded in the course of his/her secondment with the HMRC will not be disclosed to it.

## 6. DURATION AND TERMINATION

- 6.1 This Agreement shall come into effect on **[date]** and subject to the remaining provisions of this Clause 6 remain in force until **[date]**.
- 6.2 **[name of org]** may terminate this Agreement with immediate effect by giving notice to the HMRC in any of the following events:-
- (a) if the Seconded notifies **[name of org]** that he/she is not prepared to continue the secondment; or
  - (b) if the HMRC is in breach of any of the provisions of this Agreement and such breach (if capable of remedy) shall continue 21 days after notice in writing specifying the breach and requiring the same to be remedied has been given.
- 6.3 The HMRC may terminate this Agreement with immediate effect by giving notice to **[name of org]** and the Seconded without any payment in lieu of notice if the Seconded:
- (a) commits any act of dishonesty or any other serious breach or non-observance of his/her obligations under this Agreement;
  - (b) is unable to perform the Duties and Functions for a period of 6 consecutive weeks during the period of the Secondment;
  - (c) fails, in any material respect, to perform the Duties and Functions; or
  - (d) gives notice to terminate his/her Employment Agreement with **[name of org]**.
- 6.4 The HMRC may terminate this Agreement with immediate effect by giving notice to **[name of org]** and the Seconded without any payment in lieu of notice if **[name of org]** commits any serious breach or non-observance of its obligations under this Agreement;
- 6.5 In the case of a breach of this Agreement which is capable of remedy under clauses 6.3.1 or 6.3.3 or 6.4 above, the party in breach will be given 21 days from receipt of a written notice from the HMRC specifying the breach and requiring its remedy, to rectify the breach before the Agreement is terminated with immediate effect without any further notice or payment in lieu of notice.
- 6.6 Either **[name of org]** or the HMRC may terminate this Agreement by giving two

months' notice to the other.

## **7. LIABILITY**

- 7.1 The HMRC shall be responsible for all work carried out by the Seconded pursuant to his/her secondment and **[name of org]** shall have no liability therefore.
- 7.2 **[name of org]** agrees to indemnify and keep the HMRC indemnified on demand from and against all actions, claims, costs, liabilities and losses (including, without limitation, any costs incurred in settling, contesting or dealing with the same) which may be made against it or which it may suffer or incur as a consequence of or which relate to or arise directly or indirectly from any act or omission by **[name of org]** including, without limitation, any failure by **[name of org]** to perform its obligations in relation to the Seconded and any liability for any act or omission of the Seconded for which **[name of org]** remains vicariously liable notwithstanding the secondment to the HMRC.

## **8. RELATIONSHIP**

- 8.1 The HMRC and **[name of org]** agree that the Seconded shall at all times remain the employee of the **[name of org]** notwithstanding his/her secondment to the HMRC, and that nothing in this agreement shall be effective to constitute or render the HMRC the employer of the Seconded.
- 8.2 Nothing herein contained shall create or constitute the relationship of employer and employee, or principal and agent, or partnership between the HMRC and **[name of org]** and further the HMRC shall not have any power right or authority to bind **[name of org]** to any obligation.

## **9. NOTICES**

- 9.1 Any notice request or other communication required to be given under this Agreement shall be made in writing and may be hand-delivered or sent by first class recorded delivery post to the recipient at such address within the United Kingdom as the recipient may notify to the sender in writing for this purpose, or by facsimile transmission to such number within the United Kingdom as the recipient may notify to the sender in writing for this purpose, and in all cases marked for the attention of the following respective addressees:
- (a) In the case of a notice given by **[name of org]** to the HMRC [individual]; and
  - (b) In the case of a notice given by the HMRC to **[name of org]**, the Company Secretary, **[name of org]**;
  - (c) In the case of a notice given by the HMRC to the Seconded, [name].
- 9.2 Notice shall be deemed to have been received:
- (a) if sent by post three (3) Working Days after the date of posting;
  - (b) if delivered by hand on the Business Day following the date of delivery; and
  - (c) if sent by facsimile transmission on the Business Day following the date of transmission provided that the sender's apparatus has recorded the transmission as having been successfully made.
- 9.3 It shall be sufficient in proving service that the letter containing the notice was properly

addressed and (as the case may be) put in the post or delivered.

## **10. WAIVER**

- 10.1 No relaxation forbearance delay or indulgence by any party in exercising its rights under this Agreement or any granting of time by such party shall prejudice or affect its right hereunder.
- 10.2 No waiver of any default or breach under this Agreement or failure to enforce any rights by any party shall constitute a waiver of any subsequent or continuing default or breach.
- 10.3 No waiver shall be effective unless made in writing agreed and signed on behalf of the party so granting the waiver.

## **11. HEADINGS**

- 11.1 The headings in this Agreement are solely for convenience and reference and shall not be taken into account in the construction interpretation or meaning of this Agreement.

## **12. ASSIGNMENT**

- 12.1 **[name of org]** may assign any of its rights or obligations hereunder to any other company in **[name of org]**.
- 12.2 This Agreement is personal to the HMRC, who shall not without **[name of org]** prior written consent assign any of its rights or obligations hereunder, and any purported or attempted assignment by the HMRC or transfer by operation of law without such consent shall give **[name of org]** the right to terminate this Agreement with immediate effect by giving notice to the HMRC.
- 12.3 This Agreement shall be binding on the permitted assignees and successors of the parties hereto.

## **13. ENTIRE AGREEMENT AND AMENDMENTS**

- 13.1 This Agreement (together with any documents referred to herein) supersedes any preliminary or previous correspondence negotiations arrangements or agreements between the parties in relation to the matters specifically dealt with herein, and represents the entire understanding of the parties, in relation to the matters specifically dealt with his/herein.
- 13.2 No amendment to or alteration of this Agreement shall be effective unless made in writing agreed and signed on behalf of each of the parties hereto.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first before written

Signed by

For and on behalf of  
**[name of org]**

Signed by  
For and on behalf of  
**[HMRC]**

Signed by  
**[Secondee]**



**SCHEDULE 15**  
**ACCOMMODATION**

## SCHEDULE 15

### ACCOMMODATION

#### 1. PRINCIPLES AND STATEMENTS OF POLICY

- 1.1 The Customer acknowledges that the Customer Accommodation and FM Services will be required by the Supplier to provide the Services and for reasons of business continuity and the Customer shall comply with its obligations as set out in this Schedule.
- 1.2 The Customer wishes the Supplier to use the Customer Accommodation in the provision of the Services. However, the Customer reserves the right to depart from this policy (and use alternative Customer Accommodation and FM Services outside of the STEPS Contract and/or the NEP Contract(s)). The Customer (acting reasonably) will consult with the Supplier before exercising such right and any such Change shall be subject to the Change Control Procedure.
- 1.3 The Customer's accommodation policy has been determined to provide flexibility to the Supplier in deciding upon its requirements for accommodation and FM Services in order to support the provision of the Services. This flexibility is balanced by recognition of constraints imposed by certain parameters, in particular the need for business continuity and a certain degree of co-location or "close location" between the Customer's staff and Supplier Personnel and the potential costs consequences to the Customer where certain Customer Accommodation may not be required by the Supplier. This Section shall not prohibit the Supplier from engaging remote working practices when required.
- 1.4 The categories of accommodation used to provide the Services and their treatment (including FM Services) are described in this Schedule 15 (**Accommodation**). The Parties have agreed which premises are required in each of the categories listed (and the Planned Accommodation Exit Dates) to deliver the Services, this is documented in Annex 15-1. Changes to Annex 15-1 shall be made through Schedule 7 (**Change Control Procedure**). The following main categories of accommodation exist:
  - (a) Customer Accommodation is listed in Annex 15-1a. The management and treatment of such accommodation is described in Sections 2 and 3 of this Schedule 15 (**Accommodation**).
  - (b) Supplier-sourced Accommodation is listed in Annex 15-1b of this Schedule 15 (**Accommodation**). The management and treatment of such accommodation is described in Sections 2 and 3 below.
- 1.5 The Supplier, unless otherwise agreed with the Customer, will be responsible for the provision of any premises to be occupied by the Supplier other than Customer Accommodation and the costs of such premises (including the costs of transferring services, assets, and/or people from Customer Accommodation to such premises) shall be incorporated within the Charges in accordance with Schedule 5 (**Charges**) and, if appropriate, reflected in the Pricing File. Any proposed changes to the list of Supplier-sourced Accommodation set out in Annex 15-1b shall be governed by the provisions of Clause 10.2 of the Terms and Conditions.

- 1.6 If the Customer exercises any of its rights set out in this Schedule 15 (**Accommodation**) such that it requires the Supplier to vacate any of the Customer Accommodation and Customer will not provide alternative Serviced Accommodation in accordance with paragraph 12 of Annex 15-3 (Heads of Terms), then:
- (a) the Customer shall provide notice in writing (a "**Customer Vacation Notice**") to the Supplier specifying:
    - (i) the Customer Accommodation that the Supplier is required to vacate (the "**Impacted Customer Accommodation**"); and
    - (ii) the date on which the Supplier is required to vacate the Impacted Customer Accommodation;
  - (b) without limiting the Customer's right to provide a Customer Vacation Notice in accordance with Section 1.6(a), the Customer will endeavour to provide as much advance notice as is reasonable having regard to the circumstances;
  - (c) the Customer shall pay the Supplier's reasonable costs in relocating (not including the cost of reinstating any improvements which the Supplier has requested for its own business reasons unrelated to the provision of the Services to be carried out to the Serviced Accommodation being vacated);
  - (d) to the extent that the Supplier's vacation of the Impacted Customer Accommodation in accordance with the Customer Vacation Notice causes a failure by the Supplier to provide the Services ("**Customer Accommodation Vacation Impact**") then such Customer Accommodation Vacation Impact shall constitute a Relief Event under Clause 16.1 of the Terms and Conditions; and
  - (e) the Parties shall document and agree:
    - (i) any required Changes to the Agreement required in order to reflect the vacation of the Impacted Customer Accommodation in accordance with the Change Control Procedure; and
    - (ii) any activities relating to the relocation from a data centre at a Customer Accommodation as a Project, subject to Clause 10.3 of the Terms and Conditions.

## 2. **ACCOMMODATION TREATMENT**

- 2.1 Annex 15-1 sets out the Supplier's accommodation requirements as at the Effective Date (and thereafter, as amended), including in particular:
- (a) premises forming part of Customer Accommodation which the Supplier wishes to occupy (and, in each case, the duration of occupation required and the date of proposed vacation of each property ("**Planned Accommodation Exit Date**")) (Annex 15-1a); and
  - (b) any Supplier-sourced Accommodation which the Supplier intends to use in the provision of the Services (Annex 15-1b) and which may be amended pursuant to the provisions of Clause 10.2 of the Terms and Conditions.

- 2.2 Where Customer Accommodation is required, the responsibilities for the provision of that serviced Customer Accommodation and related FM Services will rest with the Customer. The Customer may provide such services to the Supplier through an FM Services Contractor. The Customer will be responsible for the provision of Customer Accommodation on a serviced basis and will bear the costs (including outgoings and business rates) which are not apportioned to the Supplier under this Schedule 15 (**Accommodation**) of such premises and the FM Services (except in circumstances detailed in this Schedule 15 (**Accommodation**)). Any apportionment of costs to the Supplier shall be ascertained by reference to Section 2.4.5 below.
- 2.3 In respect of Customer Accommodation:
- (a) the Customer will be responsible for ensuring that FM Services are provided, either by providing such FM Services itself or by working closely with an FM Services Contractor; and
  - (b) the Customer shall provide furniture and other office equipment (for the avoidance of doubt, excluding IT equipment such as desktop IT equipment, printers and multifunction print devices, file and print servers, and the maintenance and support of such equipment) of the types set out in Annex 15-2 ("**Furniture and Office Equipment**") for the Supplier's use at Customer Accommodation in connection with the provision of the Services.
- 2.4 The Customer will be responsible for accommodation costs of Customer Accommodation occupied by the Supplier. The costs of Customer Accommodation (e.g., the facility price payable to Mapeley under the STEPS Contract or the costs of Furniture and Office Equipment provided by the Customer) used by the Supplier in the provision of the Services will be met by the Customer, and, with certain exceptions, will not be re-charged to the Supplier. The apportionment of such costs shall be ascertained by reference to Section 2.4(e) below. These exceptions are set out below:
- (a) To the extent that an element of Customer Accommodation or the FM Services or Furniture and Office Equipment is used by the Supplier for non-Customer business (*e.g.*, to provide services to clients other than the Customer and/or Services Recipients), a due proportion of the costs borne by the Customer in respect of such Customer Accommodation or FM Services or Furniture and Office Equipment will be reimbursed to the Customer (either by re-charge to the Customer or by subtraction from the Service Charges), provided such costs are reasonable and market rate. In the unlikely event that an element of Customer Accommodation or the FM Services or Furniture and Office Equipment is used by the Supplier for provision of services to the Customer under the Agreement and also for non-Customer business, the Customer and the Supplier shall (each acting reasonably) co-operate to agree a reasonable apportionment for the purpose of this provision.
  - (b) The costs of:
    - (i) changes to existing Customer Accommodation (including, for the avoidance of doubt, any resulting dilapidations costs) and/or Furniture and Office Equipment provided at Customer Accommodation (including both the costs of acquisition of new or alternative Furniture and Office Equipment and the costs of replacement of existing Furniture and Office Equipment); and

- (ii) new or additional accommodation or accommodation services agreed to be met by the provision of new Customer Accommodation (i.e., not listed in Annex 15-1) and/or new FM Services and/or new Furniture and Office Equipment provided at Customer Accommodation,

will be met by the Customer (and will not be re-charged to the Supplier) to the extent that these are Customer business-related, driven by Changes to the Services, supported by an appropriate Business Case and/or (in the case of replacement Furniture and Office Equipment) required due to fair wear and tear, legislative changes or health & safety requirements. To the extent that such changes are not Customer business-related, are not driven by Changes to the Services, are not supported by a Business Case, and/or (in the case of replacement Furniture and Office Equipment) are required for reasons other than fair wear and tear, legislative changes or health & safety requirements, in respect of Customer Accommodation the Supplier shall reimburse to the Customer (either by re-charge to the Supplier or by subtraction from the Service Charges) the Customer's costs incurred in making such changes or in providing such Customer Accommodation and/or Furniture and Office Equipment. Apportionment of costs shall be ascertained by reference to Section 2.4(e) below.

- (c) Where the Supplier does not vacate any Customer Accommodation within a reasonable period following the Planned Accommodation Exit Date (to allow for the Supplier to remove its equipment, carry out any reinstatements or improvements and fulfilling any repair obligations with respect to such Customer Accommodation), Schedule 7 (**Change Control Procedure**) shall apply and, save in relation to Customer Accommodation in which the Supplier requires to remain in order to perform any of its obligations under the Prime Agreement, the Supplier shall reimburse to the Customer any additional or wasted costs incurred by the Customer (including costs payable to Mapeley, FM Services Provider or NEP) as a result of such delayed vacation by the Supplier.
- (d) Where applicable, additional costs incurred by the Customer in respect of Customer Accommodation shall be reimbursed to the Customer (either by re-charge to the Supplier or by subtraction from the Service Charges):
  - (i) as set out in Section 3.3(b) below; and
  - (ii) in the circumstances set out in Section 3.3(d) below.
- (e) Utilities charges at Customer Accommodation shall not be re-charged to the Supplier except on a fair and reasonable basis and either:
  - (i) as set out in Section 2.4(a) above; or
  - (ii) in the case of the third party charges (except for line rental which shall not be recharged) in respect of telephone and other telecommunications call charges by the Supplier and Supplier Personnel at Customer Accommodation.
- (f) In relation to re-location costs:

- (i) the Supplier shall bear all costs associated with any re-location from Customer Accommodation into its own premises or other premises sourced or provided by itself unless a Business Case is made in accordance with section 2.4(b) above; and
  - (ii) where the Supplier moves between premises forming part of Customer Accommodation, costs arising in such circumstances will be met by the Customer (and will not be re-charged to the Supplier) where these are business-related, driven by a Change to the Services and/or supported by an appropriate Business Case. In all other cases, but subject to Section 2.4(f)(i) the Supplier shall reimburse to the Customer (either by re-charge to the Supplier or by subtraction from the Service Charges) the costs incurred in such re-location.
- (g) Any expenses, losses and costs borne by the Supplier under this Schedule 15 (**Accommodation**) in all cases other than as set out in Section 2.4(e)(ii) above or as otherwise expressed to be for the account of the Customer shall not be recoverable from the Customer and will not be incorporated within the Service Charges in accordance with Schedule 5 (**Charges**).

### 3. MANAGEMENT OF ACCOMMODATION

3.1 In all cases where the Supplier wishes to occupy accommodation outside the STEPS Contract, it will provide the Customer (sufficient information (in the form of a Business Case) to allow the Customer to assess and quantify the costs (if any) attributable to the Customer through not using the STEPS Contract.

#### 3.2 Accommodation Change

- (a) Where the Supplier's need for additional accommodation or FM Services changes during the Term (including a decreased need for space or services) or the costs of providing such accommodation or FM Services change as a consequence of the Services, for each such situation, the Supplier will produce an appropriate Business Case in accordance with Section 2.4(b). For the avoidance of doubt only one Business Case is required for one request for additional or decreased Accommodation regardless of whether it relates to Customer Accommodation.
- (b) Where the Supplier wishes to vacate any Customer Accommodation on a date earlier than the Planned Accommodation Exit Date set out in Annex 15-1a and the Customer has no ongoing requirement for that accommodation, the Parties shall discuss that proposed Change through the Change Control Procedure under the Agreement and, in particular shall agree the impact of such Change on the Service Charges and/or the Customer's other costs, taking into account any attributable costs thereby incurred by the Customer (and not capable of mitigation) and the impact on the Service Charges.

#### 3.3 Provisions Relating to Accommodation

- (a) In relation to Customer Accommodation, the Supplier shall comply with requirements for and restrictions on occupiers of such premises of the STEPS Contract, the NEP Contract and of third party landlords as reflected in the

Heads of Terms, Annex 15-3. The FM Services to be provided by the Customer are governed by Section 4 below.

- (b) The Supplier shall use all Customer Accommodation in a reasonably efficient manner and, where occupation is shared with Customer or its subcontractors' personnel, in a manner which minimises interference with the Customer's or the subcontractors' operation. To the extent that the Supplier utilises Customer Accommodation and/or FM Services in a manner other than in the proper and efficient performance of services in provision of the Services that increases the Customer's costs (*e.g.*, the facility price under the STEPS Contract), such costs shall be borne by the Supplier. The Customer will involve the Supplier in its discussions with the third party levying such increases and shall provide a detailed explanation of the grounds for and level of such increase to the Supplier.
- (c) Unless otherwise agreed by the Customer in writing, the Supplier shall only use any Customer Accommodation as licensee, without any landlord and tenant relationship being thereby created and solely in the provision of the Services. The Supplier shall advise the Customer when it wishes any of its Subcontractors or their personnel to use such premises so that the Customer can give its prior written approval. Pending receipt of such approval, it shall not permit any Subcontractors or their personnel to use such premises.
- (d) The Supplier will be responsible for any damage to Customer Accommodation resulting from the abuse, misuse, neglect, negligence or treatment by the Supplier, Subcontractors or Supplier Personnel (other than fair wear and tear) or other failure to comply with the Supplier's obligations in respect of Customer Accommodation. In the event of such damage, the Supplier shall rectify such damage or, if the Customer chooses to rectify the damage, shall indemnify and keep indemnified the Customer for the total cost of such rectification.
- (e) The Supplier will not make any improvements or alterations (including those involving structural, mechanical, or electrical alterations) to any of Customer Accommodation without the Customer's prior written approval that may be given subject to any approvals or conditions required by any third party landlord or reasonably required by the Customer, to be given or withheld as described in Section 3.4(a) below. The Supplier agrees that any building alterations, modifications or works carried out by or on behalf of the Supplier without such approval shall be at the Supplier's sole expense and the Supplier shall reimburse the Customer for its associated expenses, losses and costs arising in connection with such building alterations to Customer Accommodation.
- (f) The Supplier will co-ordinate the installation of Assets at Customer Accommodation with the Customer. The installation of Assets that substantially increase the power, cooling or weight requirements for any Customer Accommodation shall be subject to the Customer's prior written approval that may be given subject to any approvals or conditions required by any third party landlord or reasonably required by the Customer, to be given or withheld as described in Section 3.4(a) below.
- (g) The Supplier will be required to undertake the safe custody of, and due return to, the Customer of all Customer Accommodation made available to or

otherwise occupied by the Supplier under the Agreement. This means that the Supplier should ensure reasonable use of Customer Accommodation that will not lead to adverse costs to the Customer respectively. Where consent is provided for works on Supplier-occupied Customer Accommodation in order to meet the Customer's business needs, these works will be carried out by Mapeley or another FM Services Contractor or as determined by the Customer and on terms reasonably required by the Customer. Reinstatement will only be required as a result of changes to Customer Accommodation instigated by the Supplier for its own business reasons and unrelated to the provision of the Services.

- (h) When any Customer Accommodation is no longer required for the performance of the Services, or upon Termination of the Agreement, the Supplier shall promptly vacate such Customer Accommodation, leaving such Accommodation in the condition required by this Schedule 15 (**Accommodation**), subject to reasonable wear and tear. The Supplier shall be responsible for all loss of, and damage to, such Customer Accommodation (other than to the extent such loss or damage is caused by the Customer or its FM Services Contractor or its subcontractors, and other than covered by insured risks and any policy of insurance that is not vitiated by the Supplier) and shall indemnify the Customer against such loss or damage to Customer Accommodation so caused, save as aforesaid.

### 3.4 Provisions relating to Customer approval and consent

- (a) If the Supplier wishes to carry out any works as described in Sections 3.3(e) and 3.3(f) above for the business purposes of the Customer, the Customer shall, at the Supplier's reasonable request, in respect of Customer Accommodation:
  - (i) consent to such alterations, improvements or installations to the extent it is itself authorised to do so (such consent not to be unreasonably delayed); or
  - (ii) to the extent it does not have the requisite authority itself, use Commercially Reasonable Efforts to procure, at its own cost, any such necessary third party consents or approvals from the owner of the relevant property to enable such works to be carried out. The Supplier acknowledges that, if such third party consent or approval is not forthcoming either at all or within a reasonable period:
    - (A) the Customer shall not be responsible for withholding consent or approval to such works; and
    - (B) either Party may invoke the Change Control Procedure to agree a solution to deal with the absence or delay of consent.

## 4. FM SERVICES

- 4.1 The Customer shall provide (or procure the provision by its FM Services Contractor(s) of):



- (a) in relation to the STEPS Premises, the relevant FM Services set out in Schedule 15 Annex 15-5 (Part A) (subject to the exceptions set out in Annex 15-5 (Part B) where certain of the FM Services will not be provided to particular STEPS Premises). Except where otherwise specifically provided and to the extent that such FM Services are relevant to a particular Customer Accommodation, the Customer shall procure that the FM Services set out in Annex 15-5 shall be provided by Mapeley (or another FM Services Contractor) during Normal Working Hours. In exceptional circumstances, it may be necessary to reduce or cancel the availability of certain FM Services for all or part of a day. In such event, the Customer will provide the maximum possible notice of such interruption to the Supplier. The Customer shall use its reasonable endeavours to procure that such interruptions are kept to a minimum and any unavailability of the FM Services due to such interruption causing a failure by the Supplier to provide the Services shall constitute a Relief Event under Clause 16.1 of the Terms and Conditions; and
  - (b) in relation to the NEP Premises, the Main Services to the extent they benefit the NEP Premises and the Additional Services, in accordance with and subject to the provisions of Annex 15-5 (Part A), subject to the exceptions set out in Annex 15-5 (Part B) where certain of the FM Services will not be provided to the NEP Premises. Except where otherwise specifically provided in this Schedule, the FM Services shall be provided during Normal Working Hours. In exceptional circumstances, it may be necessary to reduce or cancel the availability of certain FM Services for all or part of a day. In such event, the Customer will provide maximum possible notice of such interruption to the Supplier but subject (where applicable) to first being given any relevant notification under the relevant NEP Contract. The Customer shall use its reasonable endeavours to keep such interruptions to a minimum. To the extent the Main Services are, from time to time, not supplied by the FM Services Contractor for any reason (other than due to the default of the Customer) then the Customer's obligation in this Section 4.1(b) shall be suspended to the same extent but the Customer shall use its reasonable endeavours to restore (or procure the restoration of) the Main Services in question. Any unavailability of the Main Services due to such interruption causing a failure by the Supplier to provide the Services shall constitute a Relief Event under Clause 16.1 of the Terms and Conditions.
- 4.2 If the STEPS Premises cease to be subject to a right to occupy in favour of the Supplier, then the Customer shall forthwith be under no further obligation to procure the supply of any and all of the FM Services which are relevant to said Customer Accommodation, provided always that the Customer shall give to the Supplier as much notice as is reasonably possible of its intention to cease to procure the supply of some or all FM Services to the said Customer Accommodation.
- 4.3 Notwithstanding Section 4.1(b) above, if either:
  - (a) the NEP Premises cease to be subject to a right to occupy in favour of the Supplier; or
  - (b) the Customer ceases to be the Major Occupier of the Estate encompassing the NEP Premises,

then, in any such case, the Customer shall forthwith be under no further obligation to supply or procure the supply of any and all of the FM Services which are relevant to the NEP Premises, provided always that where provision of FM Services to the NEP Premises is to cease by virtue of Section 4.3(b), the Customer shall give to the Supplier as much notice as is reasonably possible of its intention to cease to supply or procure the supply of some or all FM Services to the NEP Premises and the Customer shall use all reasonable endeavours to transfer its obligations under this Schedule with regard to FM Services to the NEP Premises to the then Major Occupier of the Estate.

4.4 The Customer shall procure adherence, in relation to the STEPS Premises, by the FM Services Contractor to (and the Supplier shall accept) the following overarching requirements:

- (a) all FM Services are performed in accordance with that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking;
- (b) Customer Accommodation and FM Services provided comply with all applicable Law;
- (c) all licences, consents, permits and approvals required for the delivery, performance and provision of FM Services are obtained and maintained, and that the terms thereof are complied with;
- (d) the FM Services Contractor is provided with access to Customer Accommodation outside of Normal Working Hours as necessary, to meet the business needs of the FM Services Contractor; and
- (e) at all times, all Laws relating to health and safety are complied with.

4.5 The Customer shall ensure that all Customer Accommodation has all necessary health and safety processes and procedures in place to provide sufficient protection to personnel in response to any public health event.

## **5. CONTINUITY OF SERVICE PROVISION AT END OF CONTRACT**

5.1 On the Termination of this Agreement:

- (a) the Customer will have an on-going requirement for technology service provision which will be highly dependent on the continued use of Customer Accommodation; and
- (b) the Supplier will vacate any Customer Accommodation, save in relation to Customer Accommodation in which the Supplier requires to remain in order to perform any of its obligations under the Prime Agreement.

## **6. RIGHT TO OCCUPY**

6.1 The Customer shall be responsible for ensuring that the Supplier shall have the requisite right to occupy Customer Accommodation (or part thereof, as appropriate) for the purposes of providing the Services from the Effective Date until the relevant Planned Accommodation Exit Date. To the extent necessary, the Customer shall, at its own cost, obtain all related third party consents or approvals for this purpose.

- 6.2 The Supplier agrees that it shall not raise any requisition of title with respect to its occupation of Customer Accommodation (or part thereof).

## 7. GOVERNANCE

- 7.1 The Parties agree to apply the processes, controls and governance arrangements set out in Annex 15-4 for the provision of the FM Services on behalf of the Customer by the FM Services Contractor(s).

## 8. BUSINESS CONTINUITY

- 8.1 In the event of a significant incident, resulting in the Supplier being unable to occupy part, or all of any premises normally provided as part of Customer Accommodation, the Customer will be responsible for the provision of appropriate alternative accommodation.
- 8.2 The Customer will appoint an "IT Estate" Accommodation Business Continuity Manager, who will develop, agree and implement appropriate processes, as part of the Supplier's business continuity plans. The Supplier will appoint a Business Continuity Manager, who will work with the Customer's "IT Estate" Accommodation Business Continuity Manager to develop, agree and implement appropriate processes, as part of the Supplier's business continuity plans.
- 8.3 In respect of Customer Accommodation, the Customer shall be responsible for:
- (a) providing alternative Customer Accommodation (including, for the avoidance of doubt, alternative accommodation as well as alternative services providers) in the event of an incident occurring which prevents or is likely to prevent the Supplier occupying Customer Accommodation, as described within this Schedule 15 (**Accommodation**);
  - (b) ensuring that, wherever possible, such alternative accommodation will be:
    - (i) located within reasonable commuting distance of the affected site;
    - (ii) of sufficient capacity to enable the recovery of critical staff, with the recovery timescales to be agreed with the Supplier Business Continuity Manager;
    - (iii) of a type, quality and standard no less than currently occupied;
    - (iv) equipped with furniture and office equipment as outlined in Annex 15-2 (Schedule of Furniture and Office Equipment); and
    - (v) equipped with facilities as outlined in Annex 15-6 (Business Continuity);
  - (c) all direct costs of relocation to the alternative Customer Accommodation; and
  - (d) co-ordinating the "IT Estate" Accommodation Business Continuity Manager's activities with those of the Supplier related to the carrying out of accommodation-related business continuity and/or disaster recovery services as part of the provision of the Services.

- 8.4 The Customer's "IT Estate" Accommodation Business Continuity Manager, in liaison with local "IT Estate" representatives shall, in relation to Customer Accommodation:
- (a) develop and maintain an overall service strategy for the continuity of the Customer "IT Estate" Accommodation including the requirement to facilitate short-term reciprocal arrangements within Customer Accommodation and, if appropriate, provide medium-term or long-term suitable alternative facilities );
  - (b) develop an "IT Estate" facility specific continuity plan which will include contingency plans for maintaining critical and essential services and respond to the business needs of the Supplier;
  - (c) make provision for the continuous update of "IT Estate" facility specific asset management, site drawings and plans;
  - (d) provide assistance to the Supplier in implementing its business continuity plans in the event of an incident occurring; and
  - (e) participate, when required, in the Supplier's Business Continuity Plan exercise programme.
- 8.5 In the event of the occurrence of a disaster or contingency of the type covered by the continuity plans, the "IT Estate" Accommodation Business Continuity Manager, or local "IT Estate" representative, shall execute the "IT Estate" facility specific business continuity plans in conjunction with and with the agreement of the Supplier's Business Continuity Manager. Such actions will include, but not be limited to, the provision for the immediate securing of the site and assets and the re-instatement, if practicable, of the damaged facility.
- 8.6 If it is necessary to relocate to a suitable alternative local facility in the short, medium or long term, the "IT Estate" Accommodation Business Continuity Manager shall:
- (a) co-ordinate all "IT Estate" Accommodation activities with the appropriate Supplier Business Continuity Manager;
  - (b) provide full inclusive support and removal services; and
  - (c) maintain the security, integrity and assets of the evacuated facility.
- 8.7 It will be the responsibility of the Supplier's Business Continuity Manager to provide details of the business continuity requirements (which shall include details of the Supplier's reasonable business continuity requirements) to the "IT Estate" Accommodation Business Continuity Manager. The details will include, in the case of Supplier's requirements:
- (a) an estimate of the likely numbers of Supplier staff to be relocated, from each building;
  - (b) the maximum recovery time for these staff. This will be given in short, medium and long-term requirements; and
  - (c) availability of expected access to IT services at the recovery site.

## 9. UNAVAILABILITY OF THE *Redacted* BUILDINGS

- 9.1 The Parties acknowledge that the Supplier's access to the *Redacted* is required in order for the Supplier to perform the Services under this Agreement.
- 9.2 In the event of the Supplier's right of access to part or all of the *Redacted* being detrimentally amended, blocked or terminated ("**Redacted**") then, to the extent that such unavailability of access causes or is likely to cause a failure by the Supplier to provide the Services then the following shall apply:
- (a) the Customer may ascertain whether any appropriate alternative accommodation is available and if so will use its Commercially Reasonable Efforts to provide the Supplier with such appropriate alternative accommodation. Such alternative accommodation shall not be considered appropriate unless:
    - (i) it is equivalent or better than that provided under STEPS/NEP;
    - (ii) it is within close proximity to the relevant *Redacted* and in any event within three and a half (3.5) miles of the relevant *Redacted* Buildings;
    - (iii) it provide contiguous space (co-location) to allow Supplier teams to effectively provide the Services;
    - (iv) the Customer is able to ensure that such replacement accommodation is provided in a timely manner including provision of building security and access, facilities and network connections (Live and Dev access) equivalent to those at the relevant *Redacted* or (if not equivalent) sufficient for the purposes of enabling the Supplier to provide the Services; and
    - (v) it has in place all necessary health and safety processes and procedures to provide sufficient protection to personnel in response to any public health event;
  - (b) if the Customer notifies the Supplier that it is unable to provide appropriate alternative accommodation, the Supplier shall as soon as reasonably practicable undertake an Impact Analysis as a Shared Services Amendment in accordance with Section 3.3 of Schedule 7 (**Change Control Procedure**) to consider the impact of the *Redacted* Building Unavailability on the Supplier's performance of the Services; and
  - (c) any period of *Redacted* Unavailability shall constitute a Relief Event under Clause 16.1 of the Terms and Conditions.
- 9.3 The Supplier shall notify the Customer as soon as reasonably practicable upon becoming aware of any *Redacted* Building Unavailability.

**ANNEX 15-1A****SCHEDULE OF CUSTOMER ACCOMMODATION REQUIRED**

| <b>Premises</b>        | <b>Planned Accommodation Exit Date</b> | <b>Comments (<i>e.g.</i>, what will happen on vacation of each property)</b>                     |
|------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------|
| <b><i>Redacted</i></b> | End of Term                            |                                                                                                  |
| <b><i>Redacted</i></b> | End of Term                            |                                                                                                  |
| <b><i>Redacted</i></b> | 30 June 2021                           | <b><i>Redacted</i></b>                                                                           |
| <b><i>Redacted</i></b> | 31 December 2020                       | See Annex 15-6 (Business Continuity) and Section 8 of this Schedule 15 ( <b>Accommodation</b> ). |
| <b><i>Redacted</i></b> | End of Term                            |                                                                                                  |

1. Only part of certain premises shall constitute Customer Accommodation required, and the size of such part shall be agreed in advance between the Parties.
2. All of the above Customer Accommodation shall be provided from the Effective Date, except where otherwise indicated.

**ANNEX 15-1B**  
**ACCOMMODATION TO BE PROVIDED BY THE SUPPLIER**  
**(SUPPLIER-SOURCED ACCOMMODATION)**

|                 |
|-----------------|
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |

1. Only part of certain premises shall constitute Supplier-sourced Accommodation, and the size of such part shall be agreed in advance between the Parties.
2. All of the above Supplier-sourced accommodation shall be used from the Effective Date.

**ANNEX 15-2****SCHEDULE OF FURNITURE AND OFFICE EQUIPMENT**

The list set out below is a generic list of the types and categories of furniture and office equipment which the Customer will normally provide at Customer Accommodation. As noted in Section 2.3 of Schedule 15 (**Accommodation**), furniture and other office equipment excludes IT equipment such as desktop IT equipment, printers and multifunction print devices, file and print servers, and the maintenance and support of such equipment, which will not be provided by the Customer. The list set out below is not intended to be exhaustive and items not on the list may be added and/or provided by the Customer where there is a Customer-related business need. The Customer will provide the appropriate quantity of the following furniture and office equipment (and "appropriate" shall be determined by normal business requirements):

- Desk and 2 pedestals on 1-to-1 basis, where appropriate
- Tables (meeting, conference, kitchen, approach & use, etc.) as required for business use
- Chairs (meeting, operators etc.) as required
- Tall, Medium and Low Storage units (lockable) as required
- 2 / 4 Draw filing cabinets (lockable as required)
- Lockable cupboards as required
- Non-electric White boards / notice boards
- Use of video conference equipment
- OHP and OHP screens where in existence (these are to be phased down)
- Appropriately equipped kitchen
- Cold vending machines as appropriate (non-free)
- Post room equipped as appropriate
- Satellite photocopiers and associated consumables
- Fax machines and associated consumables
- Shelves as required
- Lockers as required
- Fire-proof safe as required by the business
- Clocks
- Telephone handsets and where required, loudspeaker and conference phones.
- Coat racks
- Plants, where existing
- Window blinds, where necessary
- Desk fans, where necessary
- Post in/out trays
- Waste bins
- Confidential waste bins
- Recycling bins
- Key safes as appropriate
- Microwaves

For the avoidance of doubt, the following non-exclusive list of items and tasks, will not be provided by the Customer:

- Office stationery (*e.g.*, pens, pencils, pads, staplers etc.)
- Shredders
- Catering equipment for internal & external meetings
- Any IT equipment or software in Customer Accommodation



- Responsibility for the purchase, provision and on-going support/maintenance of PCs, Printers, Scanners, Servers etc. and associated software

## ANNEX 15-3

### HEADS OF TERMS

- A. In conjunction with the Supplier's provision of the Services under the terms of the Agreement, the Customer agrees to provide Customer Accommodation and related FM Services (in this Annex 15-3, "**Serviced Accommodation**") to the Supplier for the duration of this Agreement as necessary for the Supplier's provision of the Services under this Agreement.
- B. The Parties agree that the Serviced Accommodation set out in this Schedule 15 (**Accommodation**) is that which the Supplier requires in order to provide the Services.
- C. The Customer will provide Serviced Accommodation at no cost to the Supplier in order to facilitate and/or support the Supplier's provision of the Services under this Agreement.
- D. Except where third party consent has already been secured, it is recognised that the Customer may need to obtain third party consent for the occupation by the Supplier of the Serviced Accommodation. The Customer will ensure that the Supplier has the requisite right to occupy the Serviced Accommodation, whether in whole or in part (as appropriate), from the Effective Date to the Planned Accommodation Exit Date.
- E. Set out below are the principal heads of terms to be read in conjunction with the main body of Schedule 15 (**Accommodation**) of this Agreement, which will govern the basis of the Supplier's occupation of the Serviced Accommodation.

Parties - the contracting parties will be the Parties.

1. Term - the Supplier's occupancy will run from the Effective Date until the Planned Accommodation Exit Date, or a day three days prior to the expiry of the reversionary leasehold interest in the Serviced Accommodation or earlier termination of this Agreement.
2. Demise - the Supplier will be permitted to occupy part or whole of the internal space of Serviced Accommodation, such space to be agreed by the Parties from time to time. Any changes to the location of such internal space following the Effective Date shall be subject to the Change Control Procedure. In agreeing the extent of the Serviced Accommodation to be occupied by the Supplier, the Customer will, on a property-by-property basis, give due consideration to the Services individual to any given property and the requirements of the Supplier, for example requisite car parking spaces. In all cases, the Customer will use Commercially Reasonable Efforts to meet the Supplier's requirements notwithstanding the need for third party consents and the Supplier will have the benefit of the use of those common parts, common facilities, and those rights which the Customer is entitled to and capable of passing through to the Supplier.
3. Rent - Pursuant to Schedule 15 (**Accommodation**) of the Agreement, the Customer will bear the cost of providing Serviced Accommodation to the Supplier.
4. Outgoings - Schedule 15 (**Accommodation**) of the Agreement sets out the Customer's position on accommodation costs. It states, *inter alia*, that when the Customer incurs third party charges in respect of telephone and other telecommunication call charges made by the Supplier and Supplier Personnel at the Serviced Accommodation, the Supplier will be recharged for the direct pass-through costs of all telephone calls and telecommunication connections (except, for the avoidance of doubt, line rental).

5. Use - Serviced Accommodation is to be used solely for the purpose of providing the Services under the Agreement unless otherwise agreed with the Customer on terms to be agreed.
6. Security of Tenure - the Supplier's occupancy will not have the benefit of security of tenure afforded by the Landlord and Tenant Act 1954. Prior to the inclusion of any new Serviced Accommodation under this Agreement, the Parties (where applicable) will affect the required procedures for excluding the security of tenure provisions of the Landlord and Tenant Act 1954. The Customer will bear the administrative and legal costs.
7. Alienation - the Supplier will not be permitted to assign, underlet, charge or part with possession of whole or part of any of the Serviced Accommodation. Subject to obtaining any necessary third party consents, the Supplier will be permitted to share occupation with any of its Subcontractors and/or Supplier Personnel provided always that the Supplier does not create a landlord and tenant relationship which could potentially give rise to a protected tenancy.
8. Yield Up - at expiry or upon earlier determination of the Supplier's occupation, the Supplier must deliver all Serviced Accommodation back to the Customer with vacant possession having removed all the Supplier's chattels and those chattels belonging to its Subcontractors and the Supplier Personnel. To the extent that the Supplier utilises Serviced Accommodation in a manner that unreasonably increases the Customer's costs, such costs shall be borne by the Supplier.
9. Alterations - the Supplier will not be permitted to make any structural alterations and/or additions to Serviced Accommodation, however the Supplier will be entitled to make non-structural alterations and/or additions with the prior written consent of the Customer (not to be unreasonably withheld), and, if applicable, the superior landlord's consent. It is agreed that the Supplier will be permitted to install the Supplier's Assets subject to prior approval from the Customer and, where applicable, any superior landlord consent. For day to day maintenance work and repairs, the Supplier and its Subcontractors and Supplier Personnel will have access to a helpdesk operated on behalf of the Customer by a nominated agent. The scope of the helpdesk function in relation to FM Services and Change will be defined in Annex 15-4 (Governance). The Supplier will be liable for the cost of any works which it specifically requests and which the Customer decides, acting reasonably, are not necessary for the performance by the Supplier of its obligation under this Agreement to provide the Services.
10. Treatment of Premises - the Supplier shall be responsible for any damage to the Serviced Accommodation resulting from abuse, misuse, neglect, negligence by the Supplier, its Subcontractors and/or the Supplier Personnel, adverse treatment other than fair wear and tear, or other failure to comply with the Supplier's obligations in relation to Serviced Accommodation as set out in Schedule 15 of the Agreement. The Supplier agrees not knowingly or recklessly to do anything or omit to do anything which may cause the Customer to be in breach of its obligations to third parties. The Supplier shall indemnify and keep the Customer indemnified for the proper cost of rectifying any damage and/or to render reasonable assistance at the Customer's reasonable request to remedy such breach, to be determined in the circumstances by the Customer.
12. Relocation notice - the Customer may, at any time during the term of the Supplier's occupation, relocate the Supplier to alternative Serviced Accommodation, provided that:

- (a) the Customer:
    - (i) serves reasonable prior written notice to relocate the Supplier;
    - (ii) uses reasonable endeavours to ensure that relocation does not interfere with the Supplier's ability to provide the Services;
    - (iii) provides alternative Serviced Accommodation of a similar size, standard, quality and location, and that such space is occupied on the same basis as provided for in Schedule 15 (**Accommodation**) of this Agreement; and
    - (iv) agrees to pay the Supplier's reasonable costs in relocating (not including the cost of reinstating any improvements which the Supplier has requested for its own business reasons unrelated to the provision of the Services to be carried out to the Serviced Accommodation being vacated); and
  - (b) such relocation is subject to the Change Control Procedure (in particular and Impact Analysis on the Supplier's continued ability to provide the Services and any changes to the Charges).
- 12.1 For the avoidance of doubt, unless a Business Case is made, the Supplier is to bear the costs associated with relocation from Serviced Accommodation to its own premises or other premises sourced or provided by the Supplier.
- 12.2 The Customer in respect of Customer Accommodation bears the following obligations to:
- (a) keep the Serviced Accommodation in good and substantial repair and condition;
  - (b) provide FM Services as specified in Annex 15-5 of this Agreement at Serviced Accommodation;
  - (c) take reasonable steps to ensure performance by any superior landlord of the landlord's covenants in any superior lease;
  - (d) ensure that the superior landlord adequately insures the Serviced Accommodation to cover full reinstatement in the event of damage/destruction;
  - (e) comply with the tenant's covenants in any superior lease to the extent that they relate to the Serviced Accommodation occupied by the Supplier;
  - (f) subject to agreement with the Supplier as to the Supplier's requirements, to furnish and equip the Serviced Accommodation (except that the Customer will not provide desktop IT equipment, printers or multifunction print devices, file and print services, and the maintenance and support of such equipment); and
  - (g) permit the Supplier lawfully and peacefully to enjoy occupation of the Serviced Accommodation without any interruption, save that the Customer, its employees, agents, contractors and/or workmen will be permitted access in order to enable the Customer to carry out its obligation to provide those FM Services defined in Annex 15-5.

**ANNEX 15-4****GOVERNANCE****Governance Processes for the provision of  
Accommodation and Facilities Management Services for  
Customer Accommodation**

## PRINCIPLES OF ACCOMMODATION GOVERNANCE

### 1. HIGH LEVEL PRINCIPLES

- 1.1 The Customer is committed to providing fully serviced accommodation to the Supplier in the Customer Accommodation as set out in Annex 15-1a of this Schedule 15 (**Accommodation**).
- 1.2 The Supplier has made an undertaking to use the Customer Accommodation to facilitate delivery of the Services to the Customer.
- 1.3 The Customer and the Supplier are all responsible for putting accommodation management teams in place to ensure that the Customer Accommodation detailed in Annex 15-1a , and FM Services detailed in Annex 15-5, are managed effectively in support of IT service delivery. This will include management of day-to-day service needs and additional requirements over time.
- 1.4 The overarching terms of occupation of the Supplier are set out in the main body of Schedule 15 (**Accommodation**) and in Annex 15-3 (**Heads of Terms**).

### 2. ROLES AND RESPONSIBILITIES

- 2.1 The Customer shall procure that the Customer Accommodation Team undertake the following roles and responsibilities in relation to Customer Accommodation:
  - (a) Single point of contact for the Supplier Accommodation Team for all aspects of accommodation and FM Services
  - (b) Management of FM Services Contractor(s) to ensure effective service delivery
  - (c) To act as escalation point for the Supplier Accommodation Team in the event of service delivery issues with the FM Service Contractor(s)
  - (d) To act as an approval / authorisation point for Supplier-initiated accommodation moves and service changes
  - (e) To manage the FM Services Contractor(s) to complete all aspects of work associated with Supplier-initiated accommodation moves and service changes
  - (f) To develop and maintain the overall long-term accommodation plan in conjunction with the Supplier
  - (g) Liaison with the Supplier Accommodation Team to understand future Supplier accommodation requirements and strategic planning
  - (h) Dissemination of site-related issues to the Supplier Accommodation Team

## 2.2 Supplier Accommodation Team

- (a) The Supplier will provide a single point of contact for the Customer Accommodation Team and FM Services
- (b) To act as the first point of contact for the Supplier's issues arising from the Customer Accommodation and FM Services, which cannot be resolved by the Customer's FM Service Contractor(s)' helpdesk, or are not resolved within a reasonable period of time or any other period of time as may be agreed by the Parties.
- (c) To act as the point of contact for changes requested by the Supplier to Customer Accommodation, and to ensure that requirements passed to the Customer for approval meet the criteria provided by the Customer, and meet the Supplier's strategic plans.
- (d) Managing Supplier's future accommodation requirement and strategic planning in conjunction with the Customer.

## 3. MEETINGS

### 3.1 The operational interface between the Customer and the Supplier will be through regular meetings. The Parties agree that:

- (a) a set agenda will be in place for all meetings as advised by the Customer;
- (b) the meetings will be chaired by the Customer;
- (c) minutes or Actions of the meetings will be provided by either the Customer Accommodation Team or the Supplier Accommodation Team at the direction of the Chair of the meeting; and
- (d) ad hoc meetings may be required to discuss specific projects and these may include representatives from the Customer's FM Services Contractor(s)' management teams.

### 3.2 Quarterly Accommodation Planning & Strategy Meeting:

- (a) **Purpose and Objectives:** To review the long-term Accommodation Plan and Strategy, and to agree changes requested by either the Customer or the Supplier, and which impact the Supplier's plans
- (b) **Scope:** All Customer Accommodation which is occupied by the Supplier and all Supplier requirements, plus any Customer requirements which impact the Supplier
- (c) **Reporting to:** Business Services Head of Corporate Services.
- (d) **Inputs:** Current long term Accommodation Plan and changes to the requirements or strategy
- (e) **Outputs:** Updated long term Accommodation Plan and strategy

(f) **Representation:**

| Representation                    | Member | Core/Periodic Attendance |
|-----------------------------------|--------|--------------------------|
| Customer Accommodation Team       |        | Core                     |
| Supplier Accommodation Team       |        | Core                     |
| Other representatives as required |        | Periodic                 |

(f) **Meeting Frequency:** Quarterly, immediately after the Quarterly Planning Cycle.3.3 **Operational Review Meeting**

- (a) **Purpose and Objectives:** To review all current major issues and risks relating to the provision of Customer Accommodation and FM Services and to agree resolution. To review progress on Customer Accommodation moves taking place during the next three months.
- (b) **Scope:** Issues and risks relating to the services provided by the BSAU. All major planned Accommodation moves
- (c) **Reporting to:** By exception, to Management Team and Business Services Management Board.
- (d) **Inputs:** Actions outstanding from previous meeting, Monthly AAU report, any issues not resolved at the Site Services Review meetings.
- (e) **Outputs:** Agreed actions. Updated Risk and Issue register.
- (f) **Representation:**

| Representation                    | Member | Core/Periodic Attendance |
|-----------------------------------|--------|--------------------------|
| Customer Accommodation Team       |        | Core                     |
| Supplier Accommodation Team       |        | Core                     |
| Other representatives as required |        | Periodic                 |

(g) **Meeting Frequency:** Monthly, in first week of the calendar month.



### 3.4 Site Services Review Meeting

- (a) **Purpose and Objectives:** To resolve issues relating to the FM Services, and to review planned Business Cases
- (b) **Scope:** Issues which cannot be resolved between the relevant FM Service Contractor and the Supplier, and Business Cases which require further discussion before approval by the appropriate parties Reporting to: BSAU and AAU management teams, Operational Review Meeting
- (c) **Inputs:** List of issues requiring resolution, Business Cases requiring discussion, Actions from previous meeting.
- (d) **Outputs:** Agreed actions.
- (e) **Representation:**

| Representation              | Member      | Core/Periodic Attendance |
|-----------------------------|-------------|--------------------------|
| Customer Accommodation Team | Team member | Core                     |
| Supplier Accommodation Team | Team member | Core                     |
| FM Services Contractor      | Manager     | Periodic as required     |

3.4.1 **Frequency:** Weekly, by exception only.

## 4. FM SERVICE

- 4.1 The Supplier Accommodation Team will hold details of service delivery standards for each FM Service Contractor, for reference purposes.
- 4.2 Where any problems arise with day-to-day service provision, Supplier Personnel will have direct access to the FM Services Contractor(s)' helpdesk.
- 4.3 FM Services Contractors that are required to visit site to rectify a problem will use their best endeavours (as procured by the Customer) to notify the Supplier Accommodation Team in advance. In exceptional circumstances, the Supplier Accommodation Team or other on-site Supplier staff may refuse access if the works required would cause significant disruption. A report on any such action taken will be provided to the Customer.
- 4.4 Requests which are not fixed within the applicable service level will be escalated, by the originator of the request, to both the FM Services Contractor(s)' helpdesk, and to the Supplier Accommodation Team.
- 4.5 In the event of continuing problems or issues with service delivery from the FM Services Contractor(s), the Supplier Accommodation Team will escalate the matter to the Customer Accommodation Team.

- 4.6 The FM Service Contractor(s) conformance to Service standards will be reviewed at monthly Operational Review meetings.

## **5. ACCOMMODATION MOVE/SERVICE CHANGE**

- 5.1 All requirements for changes to service delivery or for any works or office moves requested by the Supplier will be channeled through the Supplier Accommodation Team. This team will be responsible for drawing business requirements together and determining which will be submitted to the Customer. The Supplier Accommodation Team has a responsibility to ensure that only requests which meet agreed criteria are progressed to the Customer for the Customer's assessment and approval if appropriate.
- 5.2 The criteria will be agreed between the Customer and the Supplier and will be reviewed periodically.
- 5.3 All requests for accommodation moves or service change will be documented via a Business Case. Those Business Cases which require approval from the Customer will be submitted by the Supplier Accommodation Team to the Customer Accommodation Team. The Customer shall review and respond to each Business Case (stating its approval or rejection) within a reasonable period of time and, in any event, within ten (10) Working Days. Acceptance of Business Cases shall not be unreasonably withheld.
- 5.4 The Customer will assess Business Cases on the grounds of business need, value for money and affordability against the perceived benefits of the change. If approval is given to instigate a change the authorisation will be confirmed to the Supplier Accommodation Team and the change commissioned from the appropriate FM Services Contractor as appropriate.
- 5.5 Under no circumstances will the Supplier Accommodation Team or Supplier's staff employ their own contractors to carry out work, unless authorised to do so by the Customer for any of Customer Accommodation.
- 5.6 Where the Supplier wishes to implement changes to accommodation that do not meet the criteria agreed with the Customer, then responsibility for any costs arising lies with the Supplier. However, as the Customer is responsible for the properties, the Supplier Accommodation Team must obtain authority to proceed from the Customer Accommodation Team in order for the Customer to manage the implementation and agree the process for reimbursement of costs. Authority to proceed will not be unreasonably withheld and any costs incurred by the Customer for which it seeks reimbursement must be reasonable and market rate.

**EXHIBIT 15-1 - BUSINESS CASE FORM**

Blank HMRC  
BC.template.xls

**ANNEX 15-5****FM SERVICES (STEPS AND NEP CONTRACT)****PART A (STEPS PREMISES)****1. PREMISES STANDARDS**

1.1 All premises and all services, furniture, plant, machinery and equipment are at all times:

- (a) structurally sound;
- (b) watertight;
- (c) fit for purpose;
- (d) in good condition;
- (e) of good appearance without serious discoloration or marking;
- (d) operating in an efficient manner in accordance with design parameters to ensure the comfort and safety of the occupants; and
- (e) safe and secure.

**2. EXTERNAL STRUCTURES****2.1 Building Finish and Structures**

All building structures and finishes (i.e. walls, brickwork, rendering, cladding) are of good appearance and protect against the elements.

**2.2 Windows, Frames and External Glazing**

All windows, frames and external glazing meet the following standards:

- (a) impervious to water penetration;
- (b) open easily to allow adequate ventilation, where required;
- (c) free of draughts when closed;
- (d) capable of being secured in accordance with security standards;
- (e) have window fittings and furniture that operate correctly; and
- (f) contain glazing that is intact and undamaged.

**2.3 Roof, Guttering and Downpipes**

The roof will, at all times, provide full protection and insulation from the ingress of wind, water and other elements. In addition, rainwater collection and dispersion goods will allow the efficient run-off of rainwater and snowmelt.

**2.4 External Doors**

All external doors are:

- (a) impervious to water penetration;
- (b) free of all draughts when closed;
- (c) open easily when unlocked/required;
- (d) capable of being secured in accordance with security standards;

- (e) have fittings and furniture that operate correctly; and
- (f) where appropriate, contain glazing that is intact and undamaged.

## 2.5 External Signage

All external signage is clear, legible and structurally sound.

## 2.6 External Building Fabric Maintenance

The roofs, walls, windows and doors will be maintained to meet visual, operational, ergonomic and health and safety standards.

## 2.7 Exterior Areas Maintenance

Hard surfaces to include road and car parking, hardstandings, paths, safety barriers, patios are maintained to meet visual, operational, ergonomic and health and safety standards.

# 3. INTERNAL STRUCTURES

## 3.1 Floors

All floors are safe and provide adequate support.

## 3.2 Partitions and Internal Walling Systems

All internal partitions and walling systems are safe and secure.

## 3.3 Doors

All doors, door furniture, fixtures and fittings operate effectively to design.

## 3.4 Ceilings

All ceilings are safe and secure and in accordance with the original design.

# 4. INTERNAL FINISHES

There are provided and installed all materials required to maintain the internal finishes of Customer Accommodation in a good state of repair and appearance.

## 4.1 Floor Coverings

All floor coverings are such that they are safe and generally free from physical defects having regard to their location within Customer Accommodation.

## 4.2 Blinds, Curtains, Other Fabrics, Wall Coverings and Decorated Surfaces

All blinds, curtains, other fabrics, wall coverings and decorated surfaces are such that they are of an appearance and condition appropriate to the location within Customer Accommodation.

## 4.3 Signage

All reasonably requested integrated and co-ordinated systems of internal signage, including directional signs, door numbering, name plates and door signs, are clear and legible and at all times reflect the operational requirements of the occupants and the building design and layout.

#### 4.4 Interior Building Fabric Maintenance

All walls, doors, screens, ceilings, floor systems (to include carpets, other floor coverings, finishes, raised floors and screeds etc. to be maintained to meet visual, operational, ergonomic and health and safety standards.

Provision of a reactive repair service in addition to a planned maintenance programme to meet location requirements. In addition, any reported defects are responded to in a timely and efficient manner.

### 5. MECHANICAL AND ELECTRICAL SERVICES

All plant, equipment and equipment rooms, necessary for the delivery, performance and provision of the Services are in proper working order in accordance with their design.

#### 5.1 Computer Environment

A suitable third party specialist is employed to carry out the inspections and all changes of plant and equipment are notified to the Supplier within one (1) month of occurrence.

Risks are appropriately managed to ensure that all operations are carried out with minimal risk to the Supplier's operations, these to include;

- (a) determining equipment that cannot be maintained without a shutdown;
- (b) scheduling and resourcing maintenance tasks to run concurrently; and
- (c) managing and controlling shutdowns.

#### 5.2 Water Supply, Storage and Distribution Systems

All water supplies, storage and distribution systems will ensure the adequate, continuous and direct supply of water to all points in each Customer Accommodation where it is needed. In addition, the Customer will take reasonable steps to procure that, where appropriate, the water supply arrives in a condition suitable for direct consumption.

In addition, the Customer will take reasonable steps to procure that where there is a requirement for hot or cold water and hot or chilled potable water, systems that can supply, store and deliver this at required temperatures and in sufficient quantity at all points of supply to meet likely predicted demand and viable recovery periods are supplied and maintained.

#### 5.3 Drainage and Waste Systems

Adequate drainage and waste systems including all sanitary ware, traps, sinks, vent installation, sewage, gullies and effluent disposal service and the connections to the appropriate soil waste and drainage systems are provided. The Customer will also

take reasonable steps to procure that adequate surface water drainage to obviate the risks of flooding and ensure uninterrupted use of Customer Accommodation is provided. In addition, the Customer will respond to any blockage in a timely and effective manner.

#### 5.4 Heating Systems

Suitable controls to facilitate the heating system's proper and efficient operation at each of Customer Accommodation are provided. The Customer will ensure that, where necessary, all pressure vessels and gas appliances are independently tested at appropriate intervals.

#### 5.5 Ventilation Systems and Humidity Controls

At all Customer Accommodation where there is mechanical ventilation, air conditioning and/or cooling systems and humidity controls, or other specialist ventilation/extraction systems, these will remain balanced and operate efficiently and effectively, in accordance with their design and maintenance parameters. At all other Customer Accommodation, the Customer will take reasonable steps to procure that natural ventilation will be maintained.

#### 5.6 Electrical Power Distribution

Access to a permanent, constant and consistent electrical power supply, adequate for the Supplier's requirements, is provided.

Electrical power and all associated equipment and plant to support the operation of IT and telecom systems are provided including:

- (a) cabling distribution systems;
- (b) non-standard socket outlets and outlet apertures; and
- (c) temperature control.

#### 5.7 Standby Electrical Supply

At all Customer Accommodation where there is a standby electrical supply, it is provided to ensure the operation of electrical equipment during a mains failure.

#### 5.8 UPS

An uninterrupted power supply to ensure the operation of electrical equipment during a mains failure, dip, spike or surge is provided.

#### 5.9 Interior Lighting

Adequate lighting systems at all Customer Accommodation capable of meeting the lux level and lighting category for the function of the area are provided, together with suitable controls to allow proper, efficient and economical use of lighting. The Customer will ensure appropriate replacement of lamps and ballasts in luminaries, where required.

#### 5.10 External Lighting

External lighting that will allow safe entry to and egress from Customer Accommodation and safe movement within Customer Accommodation is provided. The Customer will ensure appropriate replacement of lamps and ballasts in luminaries where required.

#### 5.11 Emergency Lighting

Emergency lighting that will enable users safely to exit all Customer Accommodation is provided.

#### 5.12 Lifts, Hoists and/or Escalators

At Customer Accommodation, all lifts, hoists and/or escalators are provided and kept in operational order and in accordance with design parameters and the manufacturers' specifications.

#### 5.13 Lightning Protection System

A system to ensure that Customer Accommodation, systems and users will be protected from any lightning strikes is provided.

#### 5.14 Fire Detection, Suppression and Alarm Systems

All portable and fixed firefighting equipment, fire alarms, smoke alarms, sprinkler systems and suppression systems in liaison with the Local Customer Fire Officer and the Home Office Fire Inspectorate are provided.

#### 5.15 Public Address System

Public address systems that are clearly audible above all background noise, at all locations within Customer Accommodation, are provided.

#### 5.16 Induction Loops

Induction loops for the deaf and hard of hearing are provided.

#### 5.17 TV and Radio Cabling, Aerials and Sockets

TV and radio cabling, aerials and sockets are provided.

#### 5.18 Centralised Building Clock Systems

Centralised clock systems to show the correct time at all times are provided.

#### 5.19 Electronically Operated Filing and Retrieval Systems

Electronically operated filing and retrieval systems to operate as designed will be provided.

### 6. MAINTENANCE OF STRUCTURE AND EQUIPMENT

#### 6.1 Repair and Replacement of Defective and Non-Serviceable Parts



A service allowing for the repair and replacement of defective or non-serviceable parts to ensure that the structure and equipment is maintained in good operational order and is fit for the design purpose will be provided.

## **7. HEALTH AND SAFETY**

### **7.1 Recovery Rooms**

Recovery rooms, appropriate to the size of Customer Accommodation and the number of users, are provided.

### **7.2 Health and Safety Communication**

- (a) The Customer will liaise with the Supplier on Health and Safety issues including the notification of incidences such as contact with infectious diseases or hazardous substances.
- (b) The Customer will facilitate public awareness as regards to staff compliance in accordance with UK Health and Safety legislation, and the undertaking of joint periodic formal and informal inspections.
- (c) Site instructors and trainers are adequately educated to allow them to perform all procedures relating to Health and Safety.

### **7.3 Fire Escape Routes and Disabled Refuges**

Provide designated fire escape routes and disabled refuges, as appropriate to Customer Accommodation and in accordance with the fire certificate, to ensure that, in the event of an evacuation, all building users have safe and unrestricted egress from each Customer Accommodation or, in the case of disabled persons, protection from fire whilst awaiting rescue.

### **7.4 Bomb Blast Refuges**

Bomb blast refuges as appropriate to Customer Accommodation are provided.

### **7.5 Health and Safety Signage**

Appropriate Health and Safety signage is provided and displayed.

### **7.6 Fire and Evacuation Notices**

Appropriate fire and evacuation notices and the local emergency instructions in force are provided, displayed and updated.

### **7.7 Evacuation Facilities for the Disabled**

All evacuation facilities and equipment necessary for maintaining the Health and Safety of all disabled staff and those with restricted mobility for their safe and unrestricted egress from each Customer Accommodation in the event of an emergency are provided.

### **7.8 First Aid**

All First Aid rooms will be regularly inspected.

## 7.9 Risk Assessments

Appropriate standard of risk assessments are completed and maintained in relation to the provision of the FM Services.

## 8. SECURITY

### 8.1 Security Systems and Intruder Detection Systems

- (a) Management of supply, installation, servicing and repair of security systems in conjunction with appointed suppliers, and all items of security will be fully operational and working correctly.
- (b) The intruder detection systems that are provided are designed to comply with the relevant codes of practice and or laid down requirements of The National Approval Council for Security Systems ("NACOSS") and relevant British Standards to achieve the required level of security appropriate to the assessed risk at each Customer Accommodation.

### 8.2 Panic Alarms Systems

Panic alarms activated by remote signals are provided.

### 8.3 Access Control

- (a) Access control systems are provided which are designed to comply with the relevant codes of practice and/or requirements laid down by NACOSS (NACP 30) and relevant British Standards, to achieve the required level of security appropriate to the assessed risk and internal requirements at each Customer Accommodation.
- (b) Maintenance of the access control system and barrier gates to include the adding and deletion of passes and provision of audit data to comply with the Data Protection Legislation.

### 8.4 Closed Circuit Television Systems

- (a) That for specified sites, ensure operation and maintenance of CCTV equipment (cameras, control, recording equipment and related hardware).
- (b) All CCTV systems provided are designed to comply with the relevant codes of practice and/or laid-down requirements of NACOSS (NACP 20) and relevant British Standards to achieve the required level of security appropriate to the assessed risk at each Customer Accommodation. This includes all monitoring and recording and playback equipment necessary for the correct operation of the system, together with secure storage provision for tapes.

### 8.5 Security – Physical Guarding

Where appropriate, the following services (whether in-full or part) will be provided:

- (a) all security posts are kept secure and manned with the appropriate number of security staff;
- (b) 24 x 7 guarding cover at the designated sites – **Redacted** and other sites upon agreement by the Parties;
- (c) patrols (internal, external / mobile) of the site and buildings, dealing with any incidents, potential threats to security;
- (d) additional ad hoc manned guarding to facilitate project work around the site;
- (e) manufacturing, issuing and checking of ID /site passes (including visitors);
- (f) control and issuing of building keys by authorised personnel, and the locking and unlocking of buildings at agreed times;
- (g) investigation of minor incidents upon request and, where appropriate, the escalation of such reported incidents;
- (h) assurance that checks are in place allowing only authorised persons and deliveries access to the sites, preventing unauthorised persons entering restricted areas;
- (i) control and checking of vehicle passes, and the regulation of vehicular access, parking and egress from the sites;
- (j) outside of Normal Working Hours, any switchboard telephones calls are answered and dealt with where possible;
- (k) responsibility for lost and found property on site is provided;
- (l) "tannoy" announcements in appropriate buildings for routine / emergency situations;
- (m) issuing personal attack alarms to staff upon request and, if manning levels allow, accompanying, when requested, staff to their cars during working hours;
- (n) monitoring of various systems and, where required, taking action to investigate and respond;
- (o) issuing of fleet vehicle / hire car keys and documentation;
- (p) any ad hoc requests not covered above will be considered and responded to, where appropriate.
- (q) In addition, during silent hours, the security officers will:
  - (i) check that safes are secure;
  - (ii) check that specified lockable presses are secure;
  - (iii) check that there are no electrical/water hazards;
  - (iv) check that fire appliances are operational;

- (v) check that fire exits are clear;
- (vi) check that fire exits are operational;
- (vii) check that surveillance of computer hall is operational;
- (viii) check that surveillance of print room is operational;
- (ix) receive mail deliveries; and
- (x) where already in operation, ensure that security tapes are left in foyer for despatch to off-site store.

## 8.6 Security Management

Efficient security management services will be provided to include:

- (a) operational management of contracted security officers including desk training of in-house officers;
- (b) advice and guidance to staff and visitors on security procedures and policy operating within specified sites are provided;
- (c) the logging of all reported security incidences, where data is provided to the Customer's Departmental IT Security Officer;
- (d) maintenance and storing of appropriate records, together with performance monitoring, invoicing and approving of Assignment Instructions; and
- (e) purchases and all necessary consumables for security systems and locations are held by authorised personnel.

## 8.7 Ad Hoc Security Measures

Security measures such as roller spikes, barbed wire, anti-climb paint and grilles/shutters to meet the reasonable security requirements at each Customer Accommodation are provided.

# 9. CLEANING

## 9.1 Bin Stores and Storage

Bin stores to house bulk waste securely are provided.

## 9.2 Industrial Waste Disposal Equipment

Industrial waste disposal equipment, e.g. shredding machines, compactors and disintegrators, appropriate to the material to be processed and the needs of Customer Accommodation are provided.

## 9.3 Confidential Waste

Provision and maintenance of a contract for regular confidential waste disposal for collection and to ensure secure destruction:

#### 9.4 Hygiene Services

Provision and maintenance of appropriate levels of sanitary consumables and hygiene services including roller towels, sanitary supplies/dispensers. All domestic and sanitary consumables are replenished regularly.

#### 9.5 Window Cleaning

Provision of a periodic cleaning for windows (internal and external) to meet location requirements.

#### 9.6 External cleaning

Cleaning of external areas including entrances, services areas, car parks, paths, windows, lighting, signage, fixtures & fittings, snow and ice clearance to meet location requirements.

#### 9.7 General Cleaning

The following general cleaning services will be provided:

- (a) a daily cleaning and disposal service appropriate for each area consistent with its function and usage;
- (b) a waste management service for office, catering, non-confidential waste which complies with statutory procedures and documentation;
- (c) periodic cleaning for special cleans (to include carpets, blinds, etc.) to meet location requirements; and
- (d) the assurance that response to any helpdesk requests relating to cleaning will be dealt with in an efficient and timely manner.

### **10. LANDSCAPING/GARDENING – INTERNAL & EXTERNAL**

#### 10.1 Where already in existence, facilities to include, but not limited to:

- (a) gardening, maintenance and upkeep of grounds and greenery within particular locations; and
- (b) maintenance of internal plants,

are provided by fully trained personnel, certificated where required.

### **11. PEST CONTROL**

All buildings are free from pests, including but not limited to, fleas, rats, vermin, and ants. The Customer will ensure immediate response to any calls relating to this matter.

## **12. CATERING**

### **12.1 Dining Rooms and Messing Areas**

Dining rooms and messing areas discrete from operational areas to avoid any interruption to business activity are provided.

### **12.2 Service Counter Areas**

Service counter areas and equipment taking full account of the safe and efficient throughput of customers during peak periods are provided.

### **12.3 Catering Service Kitchens and Storage Rooms**

### **12.4 Catering service kitchens and storage rooms adjacent to dining areas, discrete from operational areas and to allow the efficient delivery of food, goods and disposal of waste, are provided.**

### **12.5 Light and Fixed Catering Equipment**

All fixed catering equipment sufficient to maintain the levels of service required is provided.

### **12.6 Bars, Bar Lounges and Games Rooms**

Where already in existence, bars, bar lounges and games rooms, including bar cellars and storage rooms, discrete from operational areas to avoid any interruption to business activity, are provided.

### **12.7 Tea Points/Staff Kitchens**

(a) Equipment and facilities within tea points and staff kitchens for staff to make hot and cold beverages and hygienically to store, wash and dry crockery and utensils and refrigerate milk and other consumables are provided.

(b) Facilities and equipment for staff to cook and reheat food are provided.

### **12.8 Catering Service**

A managed catering service at agreed locations is provided to include stock control, replenishing of food/drink and co-ordinate provision of hospitality catering.

### **12.9 Trolley Service/Vending Machines**

Where already in existence, a trolley service and pay purchase vending machines for cold food/drink is provided.

## **13. CONFERENCE SERVICES**

Provision of video and audio conference facilities in specified locations to include, but not be limited to, video conferencing reservations for main rooms and co-ordination of fault chasing, set up and overseeing special projection equipment, arranging site

conference rooms, equipment and refreshments (the latter will carry a charge) where requested and changing room layout where required.

#### 14. FURNITURE MANAGEMENT AND CO-ORDINATION

Provision of a centrally co-ordinated furniture management service that maximises the use of existing assets through storage, distribution and disposal. The service will include support and advice on furniture requirements within specified locations; compilation of necessary paperwork to allow for purchase of required furniture and co-ordination of access for delivery and installation will be provided.

#### 15. MAIL ROOM / POSTAL SERVICES/MESSENGERS

15.1 An operational post room for the regular distribution, sorting, collection, despatch of internal and external mail, parcels and packages is provided. The services will also include the following:

- (a) daily collection of outgoing mail and parcels by postal and parcel company;
- (b) issuing of tape boxes to other supplier sites as frequently as required;
- (c) despatch of outgoing material not documented in Customer/Supplier output handling instructions shall be negotiated with the Postroom Manager; and
- (d) a main focal point for mailroom staff, service users, distribution couriers and customs and export.

15.2 The services are open Monday to Friday, except public holidays applicable to the particular region, from:

- (a) 24x7 – **Redacted**
- (b) 07.00 to 17.00 (Monday to Thursday) and 08.00 to 16.30 (Friday) **Redacted**

15.3 Goods In

Provision of sufficient staffing for goods in areas at specified locations, such duties to include receipt of goods, couriers, despatches.

15.4 Porterage

- (a) Provision of a porterage service to include, but not restricted to:
  - (i) regular mail collection and distribution to each building;
  - (ii) regular stationery delivery to each building;
  - (iii) confidential waste collection, delivery to specific points and where required, shredding at various sites;
  - (iv) collection and removal of bulk waste from Supplier areas;
  - (v) distribution of manuals, updates, circulars and such like articles as and when required; and

- (vi) tasking, upon request of staff, to include movement of small furniture, heavy files, assembling and dismantling furniture where possible, internal/external documentation delivery when required, movement of stationery and supplies, movement of archives to and from stores, fax collection and distribution, and providing general assistance as required.

## **16. OFFICE KEEPERS**

16.1 Where already in existence, the following services will be provided:

- (a) arranging for disposal of redundant furniture;
- (b) providing and supervising portage including waste removal for shredding/baling;
- (c) providing messenger services;
- (d) supervising incineration of tapes and disks;
- (e) assisting in site accommodation moves; and
- (f) liaison point for Porter, Paper Keeper and Messenger Services.

16.2 Times of Operation

This service will be provided during the hours specified below:

08:00 – 17:00 Monday to Friday excluding Bank Holidays applicable to each location.

16.3 Third Party Recharging

Unless otherwise specified, any third party costs of consumables will be recharged to the Supplier in full.

## **17. BULK STORES**

17.1 Where already in operation, provision of bulks stores will include the following services:

- (a) placing orders with suppliers, stock control and despatch of internal requisition;
- (b) forklift trucks to carry out furniture and stationery stock-holding duties in bulk stores; and
- (c) furniture and maintenance repair.

This service will be provided during normal working hours applicable to each location.

17.2 Document Storage



A service to allow for document storage is provided.

## **18. PORTABLE APPLIANCE TESTING (PAT) OF NON-IT EQUIPMENT**

Portable appliances are checked, tested and certified to comply with statutory requirements. The Customer will ensure that PAT records are appropriately managed and maintained, and any calls relating to this matter will be dealt with efficiently.

## **19. VOICE TELEPHONE SERVICES**

19.1 The following services will be provided in relation to voice telephone:

- (a) equipment and services for internal and external telephone calls;
- (b) repairs and maintenance of telephone equipment as and when required; and
- (c) where already in existence, pay phones will be available.

Any Supplier costs associated with the provision of this service will be recharged to the Supplier accordingly.

19.2 All faults in the telephone equipment have to be notified by the Supplier to the Customer, which will report the fault to the appropriate contracted maintainer for action.

## **20. RECEPTION SERVICE**

Where applicable, a fully manned reception service to include switchboard service during the hours agreed for each particular site will be provided. In addition, the service will include special deliveries pending collection, taxi reservation and co-ordination, badge issue to visitors in accordance with security procedures.

## **21. OPERATIONS HELP DESK**

21.1 The provision of an operations help desk:

- (a) for all enquiries relating to specified services, where all helpdesk requests will be responded to in an efficient and timely manner. This service includes the monitoring of enquires and maintaining appropriate customer satisfaction records;
- (b) for processes and procedures which allow for logging and reporting, where required, and distribution of enquires to the appropriate areas for action; and
- (c) to comply with the Supplier's procedures and any requests outside the scope of services in relation to emergency or disaster recovery situations.

## **22. EMERGENCY (RAPID RESPONSE) VEHICLE RUNS**

22.1 That the following rapid response services will be provided:

- (a) deliveries of stores throughout specified sites and externally on request;

- (b) delivery of conference room equipment to conference rooms from a central store; and
- (c) any similar service that requires a rapid response, where required.

## **23. VEHICLE MANAGEMENT, MAINTENANCE AND ADMINISTRATION**

A booking service for pool cars and hire vehicles will be provided. This will include the undertaking of minor vehicle maintenance and the cleaning and checking of pool vehicles, and the provision of monthly reports on pool and hire vehicle usage and regular reviews of the shuttle bus service.

## **24. ASSET MANAGEMENT PLANNING SERVICE**

24.1 Provision of a service to allow for:

- (a) detailed plans relating to the following calendar year, the next five (5) years and a rolling programme is produced and maintained;
- (b) recording of all building plants and equipment used assets; and
- (c) the continuous maintenance of a forward maintenance asset register.

## **25. SPACE MANAGEMENT**

25.1 Any requests relating to change will be managed and delivered in a timely manner and where required, solutions and actions to be developed, to ensure timely implementation of changes. Such change to include:

- (a) management of moves and movement of staff;
- (b) recommendations for the best use of space, including identification of surplus space;
- (c) receiving and responding to accommodation planning, change requests, and implementation of these;
- (d) maintenance of accommodation plans at specified locations; and
- (e) furniture asset management.

## **26. INTERNAL COMMUNICATION SERVICE**

A service for maintaining internal communication is provided and updated on a regular basis to include notice boards, provision of desk drops, computer based information, location information, e.g., posters, newsflashes, special events.

## **27. LEISURE**

27.1 Where already in existence, fitness suites, sports halls, excluding exercise and sports equipment, licensed bar, lounge area, café, equipment for darts, table tennis and pool discrete from operational areas are provided.

**28. GENERAL SUPPORT**

28.1 The provision of general support to include but not be limited to:

- (a) kitchen equipment – maintenance of kitchen equipment to comply with statutory regulations;
- (b) shower – maintenance of shower equipment;
- (c) electrical – minor electrical work;
- (d) handyman – minor maintenance, as and when required;
- (e) administration – assistance in terms of providing drawings, plans access permits, monthly services reports, continuous customer satisfaction surveys etc., where requested; and
- (f) business/Project Support – assistance and support covering audits, Supplier bids, third party projects, risk management etc., where requested.

## **PART B (NEP PREMISES)**

### **1. MAIN SERVICES**

The Main Services, which NEP is contracted to provide under the relevant NEP Contract and which will benefit the NEP Premises are:

- 1.1 the provision of estate maintenance services in respect of the Estate and the Utilities Building, comprising:
  - (a) building fabric repair and maintenance;
  - (b) mechanical and electrical operation, repair and maintenance to the plant and equipment and water quality assurance;
  - (c) grounds maintenance, including all hardwork and softwork repair and maintenance;
  - (d) pest control;
  - (e) window cleaning; and
  - (f) maintenance and testing of the fire protection system including firefighting equipment;
- 1.2 payment of all the existing and future rates, taxes, impositions, assessments and outgoings payable in respect of all parts of the Estate which do not comprise the NEP Premises or of which the Customer does not have exclusive rights of occupation or use under the relevant NEP Contract;
- 1.3 insure the Utilities Building in accordance with clause 19 of the NEP Contract, a copy of which has been made available to the Supplier; and
- 1.4 carry out works to the Utilities Building and the Estate in accordance with the provisions of the 'Estate Maintenance Services Agreement', a copy of which has been made available to the Supplier.

### **2. ADDITIONAL SERVICES**

#### **2.1 Car Parking**

The provision of car parking in accordance with and subject to the requirements and provisions of the 'Newcastle Estate Car Parking Policy'.

#### **2.2 Ordering Small New Works and Services**

For the duration of the Agreement, the Customer will consider Supplier requests for small new works and services, and if agreed between the Customer and the Supplier (where the agreement of the Customer shall not be unreasonably withheld), the Customer will use reasonable endeavours to procure such works and services on and subject to the terms of, and in accordance with procedures existing under, the relevant NEP Contract.

#### **2.3 Porterage and Accommodation Services**

The Customer will provide the following services, if required:

- (a) fork lift truck duties, when required; and
- (b) clearance of cardboard waste.

#### 2.4 Mail, Messengers and Distribution Services

The Customer will provide the following services between 08:30 hours and 17:00 hours Monday to Thursday (and 08.30 hours to 16.30 hours on Fridays) excluding public holidays and some privilege days (provided that notice will be given to the Supplier of any changes in hours):

- (a) delivery, sorting and collection of internal and external mail;
- (b) removal of bagged-up confidential waste, as designated;
- (c) movement of supplies of photocopying paper; and
- (d) collect, sort and dispatch outgoing items.

#### 2.5 Health and Safety Checks

The Customer will monitor compliance with the Health & Safety policy in all areas to which the Supplier is entitled to have access under the terms of the relevant occupancy agreement in respect of the NEP Premises, and will provide the following:

- (a) Annual fire inspection;
- (b) Administration of emergency procedures;
- (c) Fire Exit checks;
- (d) Annual H&S inspections; and
- (e) Site Security

In respect of site security, the service provided by the Customer will be the reasonable provision of the following:

- (i) provision of security passes for the NEP Premises;
- (ii) control of vehicular and pedestrian access to the site on which the NEP Premises are located;
- (iii) 24 hour, all year guarding;
- (iv) use of CCTV and intruder detection systems;
- (v) provision of incident control service;
- (vi) patrolling site-logged and timed Guard control Electronic Recording System (24 hrs);

- (vii) vehicle searches (subject to the relevant security policy from time to time);
- (viii) visitor escort (subject to the relevant policy from time to time); and
- (ix) provision of reception facilities at the main gate to the ***Redacted*** estate and

also, during silent hours:

- (A) checking for electrical/ water hazards;
- (B) checking fire exits are clear and operational; and
- (C) receiving courier deliveries.

## 2.6 Site Services Liaison

The Customer will provide or procure the provision of a liaison point for:

- (a) site access system;
- (b) site security;
- (c) temporary and contractor passes;
- (d) emergency procedures;
- (e) conference rooms;
- (f) general Health & Safety;
- (g) use of PA system; and
- (h) operation of voice alarm systems.

## 2.7 Utilities

The Customer will procure the supply of electricity, gas and water, and the disposal of sewerage.

## 2.8 Catering Services

The Customer will procure catering services in the form of a restaurant facility and vending machines, Monday to Friday, throughout the year except for public holidays and some privilege days.

## 2.9 Conference Services

The Customer will provide efficient conference services and equipment to meet Supplier requirements.

## 2.10 Reception Services

The Customer will provide the reception services between the hours of 07.30 to 17.00 Monday to Thursday and 07.30 to 16.30 Friday, closed Saturday and Sunday.

- (a) The Customer shall provide an efficient reception service to **Redacted**
  - (i) ensuring that all visitors to **Redacted** have a point of contact and that all calls to reception are answered and dealt with appropriately;
  - (ii) managing and allocating reserved car parking for visitors and reserved parking for staff according to the provisions of the **Redacted** Car Parking policy; and
  - (iii) administering the lost property system.
- (b) The Customer shall:
  - (i) in respect of the atrium and entrance hall, corridors, lobbies, staircases, lavatories, access ways, passages and lifts within the **Redacted** building which are not comprised in the NEP Premises, undertake the cleaning, servicing, lighting and heating of any such areas;
  - (ii) make payment of all the existing and future rates, taxes, impositions, assessments and outgoings payable in respect of the areas specified in Section 2.10(b)(i) above;
  - (iii) maintain contingency plans such that, in the event of a loss of accommodation (including the NEP Premises) it will take all reasonable steps to provide alternative accommodation; and
  - (iv) clean the NEP Premises daily.

## 2.11 Required Environment

- (a) Output handling equipment areas within the NEP Premises must be fully air conditioned, with temperature and humidity controlled at the following levels:
  - (i) temperature between 18°C - 24°C; and
  - (ii) relative humidity between 40% - 70%.
- (b) Air handling plant must be installed and be capable of handling the levels of paper dust generated.
- (c) Temperatures in continuously occupied cellular office areas must not exceed the following parameters (at 1.5m above finished floor level and based on internal conditions):
  - (i) minimum of 18.5°C; and
  - (ii) maximum of 28°C (a failure rate of thirty (30) Working Days in a ten (10) year period must not be exceeded).

### 3. **SERVICE AVAILABILITY**

Unless otherwise stated in this Schedule 15 (**Accommodation**):

- 3.1 environmental and building services (being the services specified in Sections 2.7, 2.11 and (where appropriate) 2.5(e) above) will be provided to facilitate twenty-four (24) hour operations where such provision is required to enable the Supplier to provide the Services. The Customer cannot provide indefinite continuous operations but it will take all reasonable methods to give near to continuous operations. Agreed shut-down periods will be scheduled in advance; and
- 3.2 in exceptional circumstances or where the relevant occupancy agreement for the NEP Premises requires, it may be necessary for the additional services set out in Section 2 above to be reduced or cancelled for all or part of a Working Day. The Customer will endeavour to provide maximum notice of such interruptions to service and keep them to a minimum duration and will discuss alternative arrangements. Whenever possible, full discussion with the Supplier will be maintained.

### 4. **CONTRACTOR RESPONSIBILITIES**

The Supplier will comply with the reasonable rules, made in the interests of good estate management by the Customer acting reasonably and which shall be notified to the Supplier in writing.



**ANNEX 15-5 - FM SERVICES****PART B****EXCEPTIONS TO FM SERVICES (STEPS PREMISES AND NEP PREMISES)**

In the tables below, the required services set out in the vertical column will be provided at the premises set out in the top row in all cases except where designated by the use of "N" in the relevant box.

| <b>REQUIRED SERVICES</b>                | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
|-----------------------------------------|-----------------|-----------------|-----------------|-----------------|
| <b>EXTERNAL STRUCTURES</b>              |                 |                 |                 |                 |
| Building Finish and Structures          |                 |                 |                 |                 |
| Windows, Frames and External Glazing    |                 |                 |                 |                 |
| Roof, Guttering and Downpipes           |                 |                 |                 |                 |
| External Doors                          |                 |                 |                 |                 |
| External Signage                        |                 |                 |                 |                 |
| External Building Fabric Maintenance    |                 |                 |                 |                 |
| Exterior Areas Maintenance              |                 |                 |                 |                 |
| <b>INTERNAL STRUCTURES</b>              |                 |                 |                 |                 |
| Floors                                  |                 |                 |                 |                 |
| Partitions and Internal Walling Systems |                 |                 |                 |                 |
| Doors                                   |                 |                 |                 |                 |
| Ceilings                                |                 |                 |                 |                 |
| <b>INTERNAL FINISHES</b>                |                 |                 |                 |                 |

| <b>REQUIRED SERVICES</b>                                                        | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
|---------------------------------------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| Floor Coverings                                                                 |                 |                 |                 |                 |
| Blinds, Curtains,<br>Other Fabrics, Wall<br>Coverings and<br>Decorated Surfaces |                 |                 |                 |                 |
| Signage                                                                         |                 |                 |                 |                 |
| Interior Building<br>Fabric Maintenance                                         |                 |                 |                 |                 |
| <b>MECHANICAL AND<br/>ELECTRICAL<br/>SERVICES</b>                               |                 |                 |                 |                 |
| Computer<br>Environment                                                         |                 |                 | N               |                 |
| Water Supply,<br>Storage and<br>Distribution Systems                            |                 |                 |                 |                 |
| Drainage and Waste<br>Systems                                                   |                 |                 |                 |                 |
| Heating Systems                                                                 |                 |                 |                 |                 |
| Ventilation Systems<br>and Humidity<br>Controls                                 |                 |                 |                 |                 |
| Electrical Power<br>Distribution                                                |                 |                 |                 |                 |
| Standby Electrical<br>Supply                                                    |                 |                 |                 |                 |
| UPS                                                                             |                 |                 |                 |                 |
| Interior Lighting                                                               |                 |                 |                 |                 |
| External Lighting                                                               |                 |                 |                 |                 |
| Emergency Lighting                                                              |                 |                 |                 |                 |

| <b>REQUIRED SERVICES</b>                             | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
|------------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| Lifts, Hoists and/or Escalators                      |                 |                 |                 |                 |
| Lightning Protection System                          |                 |                 |                 |                 |
| Fire Detection, Suppression and Alarm Systems        |                 |                 |                 |                 |
| Public Address System                                |                 |                 |                 |                 |
| Induction Loops                                      |                 |                 |                 |                 |
| TV and Radio Cabling, Aerials and Sockets            |                 |                 |                 |                 |
| Centralised Building Clock Systems                   |                 |                 |                 |                 |
| Electronically Operated Filing and Retrieval Systems |                 |                 |                 |                 |
| <b>MAINTENANCE OF STRUCTURE AND EQUIPMENT</b>        |                 |                 |                 |                 |
| <b>HEALTH AND SAFETY</b>                             |                 |                 |                 |                 |
| Recovery Rooms                                       |                 |                 |                 |                 |
| Health and Safety Communication                      |                 |                 |                 |                 |
| Fire Escape Routes and Disabled Refuges              |                 |                 |                 |                 |
| Bomb Blast Refuges                                   | N               | N               | N               | N               |
| Health and Safety Signage                            |                 |                 |                 |                 |

| <b>REQUIRED SERVICES</b>                        | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
|-------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| Fire and Evacuation Notices                     |                 |                 |                 |                 |
| Evacuation Facilities for the Disabled          |                 |                 |                 |                 |
| First Aid                                       |                 |                 |                 |                 |
| Risk Assessments                                |                 |                 |                 |                 |
| <b>SECURITY</b>                                 |                 |                 |                 |                 |
| Security Systems and Intruder Detection Systems |                 |                 |                 |                 |
| Panic Alarms Systems                            | N               | N               | N               | N               |
| Access Control                                  |                 |                 |                 |                 |
| Closed Circuit Television Systems               |                 |                 |                 |                 |
| Security-Physical Guarding                      |                 |                 |                 |                 |
| Security Management                             |                 |                 |                 |                 |
| Ad Hoc Security Measures                        |                 |                 |                 |                 |
| <b>CLEANING</b>                                 |                 |                 |                 |                 |
| Bin Stores and Storage                          |                 |                 |                 |                 |
| Industrial Waste Disposal Equipment             |                 |                 |                 |                 |
| Confidential Waste                              |                 |                 |                 |                 |
| Hygiene Services                                |                 |                 |                 |                 |
| Window Cleaning                                 |                 |                 |                 |                 |

| <b>REQUIRED SERVICES</b>                                 | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
|----------------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| External Cleaning                                        |                 |                 |                 |                 |
| General Services                                         |                 |                 |                 |                 |
| <b>LANDSCAPING / GARDENING – INTERNAL &amp; EXTERNAL</b> |                 |                 |                 |                 |
| <b>PEST CONTROL</b>                                      |                 |                 |                 |                 |
| <b>CATERING</b>                                          |                 |                 |                 |                 |
| Dining Rooms and Messing Areas                           | N               | N               |                 |                 |
| Service Counter Areas                                    |                 | N               |                 |                 |
| Catering Service Kitchens and Storage Rooms              |                 | N               |                 |                 |
| Light and Fixed Catering Equipment                       | N               | N               |                 |                 |
| Bars, Bar Lounges and Games Rooms                        | N               | N               | N               | N               |
| Tea Points/Staff Kitchens                                |                 |                 |                 |                 |
| Catering Service                                         |                 | N               |                 |                 |
| Trolley Service/Vending Machine                          |                 |                 |                 |                 |
| <b>CONFERENCE SERVICES</b>                               |                 |                 |                 |                 |
| <b>FURNITURE MANAGEMENT AND CO-ORDINATION</b>            |                 |                 |                 |                 |

| <b>REQUIRED SERVICES</b>                                           | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
|--------------------------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| <b>MAIL ROOM /<br/>POSTAL SERVICES<br/>/ MESSENGERS</b>            |                 |                 |                 |                 |
| Goods In                                                           | N               |                 |                 |                 |
| Porterage                                                          |                 |                 |                 |                 |
| <b>PAPER KEEPERS/<br/>STATIONERY<br/>STORE</b>                     | N               |                 | N               |                 |
| Times of Operation                                                 | N               | N               | N               |                 |
| Third Party<br>Recharging                                          | N               | N               | N               |                 |
| <b>OFFICE KEEPERS</b>                                              | N               | N               | N               |                 |
| Times of Operation                                                 | N               | N               | N               |                 |
| Third Party<br>Recharging                                          | N               | N               | N               |                 |
| <b>BULK STORE</b>                                                  | N               |                 |                 |                 |
| Document Storage                                                   | N               |                 |                 |                 |
| <b>PORTABLE<br/>APPLIANCE<br/>TESTING OF NON-<br/>IT EQUIPMENT</b> |                 |                 |                 |                 |
| <b>VOICE<br/>TELEPHONE<br/>SERVICE</b>                             |                 |                 |                 |                 |
| <b>RECEPTION<br/>SERVICE</b>                                       |                 | N               |                 |                 |
| <b>OPERATIONS<br/>HELP DESK</b>                                    |                 |                 |                 |                 |
| <b>TRANSPORT</b>                                                   | N               | N               | N               | N               |

| <b>REQUIRED SERVICES</b>                                  | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> | <i>Redacted</i> |
|-----------------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| <b>EMERGENCY (RAPID RESPONSE) VEHICLE RUNS</b>            | N               | N               | N               | N               |
| <b>VEHICLE MANAGEMENT, MAINTENANCE AND ADMINISTRATION</b> | N               | N               | N               | N               |
| <b>ASSET MANAGEMENT PLANNING SERVICE</b>                  |                 |                 |                 |                 |
| <b>SPACE MANAGEMENT</b>                                   |                 |                 |                 |                 |
| <b>INTERNAL COMMUNICATION SERVICE</b>                     | N               | N               | N               | N               |
| <b>LEISURE</b>                                            | N               | N               | N               | N               |
| <b>GENERAL SUPPORT</b>                                    |                 |                 |                 |                 |

**ANNEX 15-5 – FM SERVICES****PART C****STEPS PREMISES**

|                 |
|-----------------|
| <i>Redacted</i> |
| <i>Redacted</i> |
| <i>Redacted</i> |

**NEP Premises**

The NEP Premises comprise those parts referred to Annex 15-1 forming part of the Utilities Building.



## ANNEX 15-6

**BUSINESS CONTINUITY FACILITIES TO BE PROVIDED BY THE CUSTOMER**

The Facilities at "**Redacted**" will be provided by the Customer to the Supplier until 31 December 2020 on the following basis:

| Category                    | Requirement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Site Access</b>          | <p>Designated Supplier staff will be given 24x7 365 access, and this will be managed by the Customer.</p> <p>The Facilities will be in an access-controlled area (secured with key card access) managed by the Customer</p> <p>Supplier to have limited access to the BC/Comms Room, for authorised staff as appropriate</p> <p>Customer to produce and maintain a documented process for how access to <b>Redacted</b> will be possible overnight and the times when the process will be active. I.e. Weekends and Bank Holidays</p> |
| <b>Desks / Workstations</b> | <p>Customer to provide 48 desks</p> <p>Customer to provide height adjustable desks if required</p> <p>Health &amp; Safety team annually to ensure the facility is fit for purpose</p> <p>Customer to provide Floor Plan view of area with the BC Desks allocated</p> <p>Each desk to be allocated a chair and, on a reasonable endeavours basis, 4xMains Power Sockets</p>                                                                                                                                                            |
| <b>Telephones</b>           | <p>1 VOIP phone per desk, and/or hotdesk lines</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

|                             |                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Environment</b>          | Customer to provide access to hot and cold water, vending machines, kitchen and toilet facilities on 24 x 7 basis                                                                                                                                                                                                                                                          |
| <b>Network Connectivity</b> | <p>Live and Dev Connections to desks as agreed between the Parties</p> <p>Customer to provide guest Wi-Fi to enable appropriate VPN connectivity to Supplier Corporate Systems.</p> <p>The guest Wi-Fi password (and any updates) will be confirmed by Customer</p> <p>Limited network switch access for appropriate authorised staff will be required for re-patching</p> |
| <b>Printers</b>             | <p>Customer to provide a location/power to house a Supplier printer.</p> <p>Customer to provide Customer Network Printer</p>                                                                                                                                                                                                                                               |
| <b>Security</b>             | <p>The area is restricted via access control and a restricted access manager has been appointed by Customer. A signing in book has been provided</p> <p>Signing in/log book available for the BC Area for visitors</p>                                                                                                                                                     |
| <b>Help Card</b>            | Customer to produce Help Card with Site information on use of Facilities and including, for example details on First Aiders, Alarm Testing, Local Hotel contact details, postal collection times, summary of facilities – Fire evacuation point, Toilets, Drink Machines etc.                                                                                              |
| <b>Secure Storage</b>       | Customer will provide Secure storage cupboard,                                                                                                                                                                                                                                                                                                                             |
| <b>Utilities</b>            | Customer to procure utilities for the accommodation at no charge to Supplier                                                                                                                                                                                                                                                                                               |

**SCHEDULE 16**

**INSURANCE**

## SCHEDULE 16

### INSURANCE

#### 1. INSURANCE COVENANTS

- 1.1 Without prejudice to its obligations to the Customer under this Agreement, including its indemnity and liability obligations:
- (a) subject to Section 1.1(b) below, the Supplier shall maintain the insurances set out in Section **Error! Reference source not found.** below at the minimum levels of cover set out in Section **Error! Reference source not found.** below in full force and effect at all times during the Term from the Effective Date, and any other insurances as may be required by applicable Law;
  - (b) notwithstanding Section 1.1(a) above, in respect of professional indemnity, the Supplier shall maintain the insurances set out in Section **Error! Reference source not found.** as "Professional indemnity" below at the minimum levels of cover set out in that part of Section **Error! Reference source not found.** below in full force and effect at all times during the Term from the Effective Date and for six (6) years following the end of the Term;
  - (c) the Supplier shall not:
    - (i) cancel the insurances other than as set out in Section 1.1(d) below; or
    - (ii) make any material change to the insurances which results in the insurance terms or cover failing to comply with the obligations set out in this Schedule; and
  - (d) the Supplier may change insurers with whom the insurances are held, provided that at all time the insurance terms and cover are in accordance with the obligations set out in this Schedule.
- 1.2 The insurances shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.
- 1.3 The insurances shall be maintained with a reputable insurance company.
- 1.4 The Supplier shall not take any action or fail to take any action or permit anything to occur in relation to it which would entitle the relevant insurer to cancel, rescind or suspend any insurance, or to treat any insurance as avoided in whole or part. The Supplier shall notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance under any insurance in whole or in part.
- 1.5 On request from the Customer, the Supplier shall, not more than ten (10) Working Days after the Effective Date and within twenty (20) Working Days after changing insurers with whom the insurances are held, forward a letter from its insurance brokers who arranged the insurances confirming that the insurances the Supplier has in effect

fully meet the requirements of this Schedule containing at least the following information:

- (i) Class of insurance;
- (ii) Insurer;
- (iii) Period;
- (iv) Confirmation that the levels of insurance are at least as required in Section 2 below; and
- (v) Confirmation that the insurance is in full force and effect.

1.6 The Customer may, no more than once every twelve (12) months, request in writing from the Supplier evidence of the existence of all insurances and the Supplier shall provide all such evidence within thirty (30) Working Days of such written request.

1.7 Where any insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

1.8 Where any insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Customer any sum paid by way of excess or deductible under the insurances whether under the terms of this Agreement or otherwise.

1.9 Nothing in this Agreement shall oblige the Supplier to take out or maintain insurance or insurance cover which is either:

- (i) unavailable in the insurance market with reputable insurers; or
- (ii) offered by insurers on terms such that the relevant insurance is not generally purchased by service providers similar in size and nature to the Supplier.

## 2. INSURANCES – REQUIRED CLASSES OF INSURANCE COVER

| Class            | Minimum Sum Insured | Scope of Cover                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Public liability | <i>Redacted</i>     | <p>To indemnify the insured party in respect of their legal liabilities consequent upon:</p> <ul style="list-style-type: none"> <li>• death of or bodily injury, illness or disease;</li> <li>• loss of or damage to property; and</li> <li>• interference to property or the enjoyment of use thereof by obstruction, trespass, nuisance, loss of amenities or any like cause,</li> </ul> <p>happening during the period of insurance.</p> |

| Class                                     | Minimum Sum Insured    | Scope of Cover                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Products liability                        | <b><i>Redacted</i></b> | <p>To indemnify the insured party in respect of their legal liabilities consequent upon:</p> <ul style="list-style-type: none"> <li>• death of or bodily injury, illness or disease;</li> <li>• loss of or damage to property; and</li> <li>• interference to property or the enjoyment of use thereof by obstruction, trespass, nuisance, loss of amenities or any like cause,</li> </ul> <p>happening during the period of insurance.</p>                                                                                                                                                                                                                                                                                 |
| Professional indemnity                    | <b><i>Redacted</i></b> | <p>To indemnify the insured for all sums which the insured party shall become legally liable to pay (including claimants' costs and expenses as a result of claims first made against the insured during the policy) by reason of:</p> <ul style="list-style-type: none"> <li>• an error in services rendered or that should have been rendered by the insured or for which the insured is legally responsible; and</li> <li>• the failure of the named insured's products to perform the function or serve the purpose intended after installation or testing by the insured and arising solely out of an error by the insured,</li> </ul> <p>arising out of or in connection with the performance of its obligations.</p> |
| Employer's liability                      | <b><i>Redacted</i></b> | <p>To indemnify the insured party in respect of their legal liabilities consequent upon death of or bodily injury, illness or disease to any employee happening during the period of insurance.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Property Damage and Business Interruption | <b><i>Redacted</i></b> | <p>To indemnify the insured party in respect of "All Risks" of physical loss or damage to the Technical Infrastructure being the combination of Equipment, Software and other items which the Supplier owns or leases and shall from time to time develop, implement and/or operate as appropriate in order to fulfil the Services, including the architectural principles and standards on which the Technical Infrastructure is based; and</p> <p>To indemnify the insured party for loss of revenue and additional increased costs following loss or damage:</p>                                                                                                                                                         |

| Class | Minimum Sum Insured | Scope of Cover                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       |                     | <ul style="list-style-type: none"><li>• which is indemnifiable or would be indemnifiable but for the application of the excess under the property/computer insurance; and/or</li><li>• to any premises owned occupied or utilised by the insured party and the premises of any customer or third party where the insured party has property on hire, lease or loan to such customers or third parties and where the insured party has property for which they deem themselves responsible on hire or lease or loan from customers anywhere in the world</li></ul> |

**SCHEDULE 17**  
**COLLABORATION**



## 1 **DEFINITIONS**

1.1 In this Schedule 17, the following definitions shall apply:

|                                       |                                                                                                                |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <b>"Customer Business Objectives"</b> | has the meaning given in Section 2.1 ( <b>Introduction</b> ) of this Schedule 17;                              |
| <b>"Other Supplier"</b>               | any other third party which supplies services to the Customer; and                                             |
| <b>"Required Behaviours"</b>          | means the behaviours set out in Exhibit 17-1 to Annex 17-1 ( <b>Required Behaviours</b> ) to this Schedule 17. |

## 2 **INTRODUCTION**

2.1 This Schedule 17 sets out the objective of the Customer that its suppliers (including the Supplier) should work cooperatively and collaboratively with each other and with the Customer to achieve the following objectives:

- (a) good HMRC user experience (internal and external);
- (b) pace and flexibility in service delivery; and
- (c) security and resilience,

(**"Customer Business Objectives"**).

2.2 Unless otherwise expressly stated, the Customer Business Objectives set out in Section 2.1 and the contents of this Schedule 17 are not contractually binding, and do not amend the meaning or intent of this Agreement. Instead, they are intended to provide a general set of principles for the spirit of the engagement of the Parties with each other, and with Other Suppliers and relevant third parties.

## 3 **NOTIFICATION OF FAILURE**

3.1 The Parties shall, at all times, act in accordance with the principle of "fix first, settle later", requiring that each Party shall concentrate on solving a problem as expeditiously and cost effectively as possible and leave any Disputes as to which Party or Other Supplier (if any) is responsible, which Party or Other Supplier (if any) should bear the cost of fixing the problem and any associated legal issues until resolution of the relevant problem.

3.2 Where the Supplier fails or becomes aware that it is likely to fail to comply with any obligation under this Agreement and that failure could impact on the performance of inter-related services by any Other Supplier(s) or the Customer, the Supplier shall as soon as is reasonably practicable communicate to the Customer such failure or likely failure.

3.3 Where the Supplier becomes aware of an event or incident that that could impact on the performance of its own Services or the performance of the services by any Other Supplier(s) or the Customer, the Supplier shall as soon as is reasonably practicable communicate to the Customer such failure or likely failure.

## **4 COLLABORATION AND REQUIRED BEHAVIOURS**

- 4.1 In performing any Modernisation Services and Application Services, the Supplier shall comply with this Section 4 and the provisions of Annex 17-1 (**Required Behaviours**) to this Schedule 17. In the case of such Modernisation Services and Application Services, the Supplier should also work cooperatively and collaboratively with the Customer and Other Suppliers with the objective of achieving value for money.
- 4.2 The Supplier shall work collaboratively with the Customer and Other Suppliers of inter-related services to deliver the Supplier's applicable Services towards the successful end to end transition and implementation of all services procured by the Customer, and steady state running of those services.
- 4.3 As a consequence, the Supplier shall co-operate with the Other Suppliers:
- (a) in the orderly provision of seamless end to end services;
  - (b) to avoid hindering provision of services by any other suppliers;
  - (c) where appropriate to facilitate the successful delivery of services by other suppliers;
  - (d) to avoid unnecessary duplication of effort;
  - (e) to avoid unnecessary disturbance to the Customer and other suppliers;
  - (f) to do what is reasonably necessary to integrate systems and the services provided under this Agreement with other relevant systems and services;
  - (g) to assist integration and interfacing where the applicable Services provided under this Agreement or other services are subject to inter-party dependencies; and
  - (h) in respect of Modernisation Services and Application Services, to achieve value for money solutions for the Customer.
- 4.4 The Supplier shall not unreasonably seek to blame Other Suppliers for service failures but support Other Suppliers in the resolution of incidents and problems relating to the delivery of the applicable Services.

## **5 GOVERNANCE**

- 5.1 In addition to those meetings specified in Schedule 8 (**Governance**) and in the remaining provisions of this Agreement, the Supplier shall ensure that an appropriate representative attends, on the Supplier's behalf, such other meetings relevant to the Supplier and/or the Services which may be held with Other Suppliers and/or other third parties that the Customer may reasonably request from time to time.

## ANNEX 17-1

### REQUIRED BEHAVIOURS

#### 1 DEFINITIONS

1.1 In this Annex 17-1, the following definitions shall apply:

|                                     |                                                                                                   |
|-------------------------------------|---------------------------------------------------------------------------------------------------|
| <b>"Service Provider"</b>           | the Supplier, all other suppliers and the Customer and Services Recipients; and                   |
| <b>"Service Provider Personnel"</b> | all directors, officers, employees, agents, consultants and contractors of the Service Providers. |

#### 2 REVIEW OF PERFORMANCE AGAINST THE REQUIRED BEHAVIOURS

2.1 Following the commencement of any Modernisation Services and Application Services, the Supplier shall ensure that an appropriate representative attends, on the Supplier's behalf, such meetings that the Customer may request from time to time to review the Parties' respective performance against the Required Behaviours.

2.2 Subject to Section 2.5 of this Annex 17-1, any persistent instances of the Supplier not demonstrating the Required Behaviours will be recorded and may result in the following actions being taken:

- (a) the Customer may require that the Supplier attend an exceptional meeting (the **"Supplier Review Meeting"**) to be convened by serving not less than five (5) Working Days' notice; and
- (b) at the Supplier Review Meeting, the Supplier will be required to detail the actions it will take to prevent further failures to demonstrate the Required Behaviours and, in the event that:
  - (i) the actions proposed by the Supplier fail to remedy the breach of Required Behaviours within thirty (30) Working Days of such Supplier Review Meeting; or
  - (ii) the Customer reasonably believes that such actions will not or are unlikely to remedy the failure to demonstrate the Required Behaviours or that the timescales for delivering such actions are inappropriate,

the Customer may require the Supplier to provide to the Customer for approval a formal rectification plan, to address the impact of and prevent the reoccurrence of a the failure, as soon as is reasonably practicable and, in any event, within five (5) Working Days from the date of the Customer's request.

2.3 The Supplier shall carry out the approved rectification plan submitted under Section 2.2 of Annex 17-1 in accordance with its terms, and shall report the status of the remedial efforts being undertaken to the Customer on a regular basis, and in any event no less than once per week, until the Customer is satisfied that the breach of the Required Behaviours has been remedied.

2.4 The Parties acknowledge and agree that a failure to perform in accordance with any of the Required Behaviours shall not in itself constitute a breach of that Party's obligations under this Agreement but shall, in the case of persistent instances of non-compliance, entitle the Customer to require the performance of the actions set out in Sections 2.2 and 2.3 above.

2.5 If a failure of the Supplier to demonstrate the Required Behaviours is:

- (a) also a Default of another obligation under this Agreement; and/or
- (b) disputed by the Supplier,

then such Default and/or dispute may be resolved in accordance with Clause 31 of the Terms and Conditions, and if such Default and / or dispute is being resolved in accordance with Clause 31 of the Terms and Conditions, then Clause 31 of the Terms and Conditions shall apply in replacement of the actions set out in Section 2.2 of this Annex 17-1.

**EXHIBIT 17-1****REQUIRED BEHAVIOURS****1 TAKING RESPONSIBILITY**

- 1.1 Each Party shall improve its working relationships with the other and with the other Service Providers taking responsibility to fulfil collaboratively agreed commitments to support the delivery of the Customer Business Objectives (as notified to the Supplier from time to time) through leadership, awareness, information exchange and joint problem solving.
- 1.2 The Parties shall demonstrate consistent leadership at all levels to set an agreed expectation for the direction of the collaborative relationship through appropriate actions, behaviours and effective empowerment, in particular by establishing a strong direction and a persuasive future vision for collaboration.
- 1.3 The Supplier shall seek to understand the Customer's objectives and goals in relation to the end to end services in order to support and improve the Parties' collaborative relationships and behaviours.
- 1.4 The Parties shall be open, transparent and responsive in sharing with other Service Providers relevant and accurate information required to facilitate the delivery of the Customer's objectives.
- 1.5 The Parties shall demonstrate collaborative behaviour by proactively leading on, pre-empting, mitigating and contributing to the resolution of service delivery problems or issues irrespective of their contractual obligations, including acting in accordance with the principle of "fix first, settle later".

**2 CONSISTENCY AND CONVERGENCE**

- 2.1 Each Party acknowledges that adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with other Service Providers will support the successful delivery of the Services.
- 2.2 Where necessary and in accordance with this Agreement the Supplier shall adopt common working practices and common terminology with other Service Providers to support the successful delivery of the Services, including by:
  - (a) where appropriate, adopting such standard terminology as is used already by the Customer and its other Service Providers;
  - (b) using recognised industry standard terminology wherever appropriate (and outside VME and MVE), in preference to terminology that describes the Supplier's own products, services, tools and processes;
  - (c) working with the other Service Providers to identify and resolve any ambiguities in the use of terminology in the delivery of the Services; and

- (d) demonstrating an ability and willingness to work proactively with other Service Providers to deliver potential solution designs and/or optimal services for improve value, using consistent end to end service delivery processes.
- 2.3 The Parties shall work individually and collaboratively with the other Service Providers to achieve optimal exploitation of people skills, facilities and tools within the wider organisation and the flexible allocation of those resources to achieve delivery of the current and future business requirements.
- 2.4 The Supplier shall demonstrate willingness to utilise existing solutions, technologies and open standards where commonly available to the other Service Providers rather than "re-inventing wheels" in order to facilitate the efficient and effective delivery of the Customer's objectives.

### **3 OPENNESS AND COMMUNICATION**

- 3.1 The Parties shall provide cooperation, support, information and assistance to each other and to other relevant Service Providers in a proactive, transparent and open way and in a spirit of trust and mutual confidence, to achieve the Customer Business Objectives.
- 3.2 The Parties shall act as "one team" with each other and with the other Service Providers (i.e. leave company badges at the door) and collaborate to deliver the Customer's objectives (as notified to the Supplier from time to time), including by:
  - (a) maintaining a genuine, non-defensive presence and working openly and collaboratively with the other Service Providers to resolve any problems that arise;
  - (b) engaging in regular and open communication with each other and with the other Service Provider and with other the Customer's delivery groups and avoiding working in "silos";
  - (c) demonstrating a willingness and ability to:
    - (i) listen to other parties' concerns and consider in good faith all constructive feedback without triggering unnecessary escalation; and
    - (ii) provide constructive feedback to other Service Providers where appropriate; and
  - (d) behaving in a supportive and considerate manner to each other and all Service Provider Personnel, regardless of organisation.
- 3.3 The Parties shall identify and adopt appropriate types and styles of communications, behaviours and engagement activities. This includes the identification of clear lines of engagement and authorities in support of decision making and actively working with the other Service Providers to develop and improve the working relationships between delivery teams to promote the Customer's objectives (as notified to the Supplier from time to time).

3.4 The Parties shall promptly and proactively:

- (a) identify factors which may compromise or enhance the solution or performance;
- (b) analyse the impact and likelihood of such factors;
- (c) escalate and mitigate emerging risks; and
- (d) exploit opportunities to enhance the solution or performance.

#### **4 DELIVERY AND INNOVATION**

- 4.1 Each Party shall individually and collectively and with the other Service Providers work to deliver the Customer Business Objectives (as notified to the Supplier from time to time) and achieve value and ensure the orderly provision of seamless end to end services.
- 4.2 The Parties shall encourage, identify, implement and capitalise on opportunities to improve products, services, processes, technologies or ideas to deliver better solutions and performance throughout the relationship lifecycle.
- 4.3 The Supplier shall demonstrate a drive to continually strive to deliver in order to support the Customer to achieve its ambition to become the most digitally advanced tax authority in the world.
- 4.4 The Parties shall act responsively to change and shall proactively identify situations where change may be appropriate and empower staff to consider and jointly take managed risks as appropriate.
- 4.5 Each Party shall recognise exceptional performance across the ecosystem, regardless of which Service Provider(s) are responsible for such performance, and where applicable implement processes to achieve such recognition.

**SCHEDULE 18**  
**SERVICES RECIPIENTS**



| #  | Services Recipient           | Requirements                                                                                                                                                                                                                              |
|----|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Isle of Man Customs Services | As agreed with the Supplier all Former HMCE services are made available (via 2mb leased circuit over the HMRC Contracted Infrastructure) to Isle of Man customs service, including CCG services.                                          |
| 2. | Border Force (BF)            | Formerly a part of HMCE, Border Force as agreed with the Supplier retained their requirement to access HMRC services when BF were created as a separate Government agency and as such required continued user access to the VME services. |

**SCHEDULE 19**

**DEED OF GUARANTEE**

**CONTENTS**

|     |                                                        |     |
|-----|--------------------------------------------------------|-----|
| 1.  | DEFINITIONS AND INTERPRETATION                         | 540 |
| 2.  | THE GUARANTEE                                          | 541 |
| 3.  | ENFORCEMENT                                            | 542 |
| 4.  | OBLIGATIONS OF GUARANTOR                               | 543 |
| 5.  | WARRANTIES AND REPRESENTATIONS                         | 543 |
| 6.  | SET-OFF                                                | 543 |
| 7.  | AMENDMENTS TO OBLIGATIONS UNDER THE SERVICES AGREEMENT | 543 |
| 8.  | CONTINUING SECURITY                                    | 544 |
| 9.  | ASSIGNMENT                                             | 544 |
| 10. | REINSTATEMENT                                          | 545 |
| 11. | PAYMENTS                                               | 545 |
| 12. | SEVERANCE                                              | 545 |
| 13. | ENTIRE AGREEMENT                                       | 545 |
| 14. | NOTICES                                                | 545 |
| 15. | THIRD PARTY RIGHTS                                     | 546 |
| 16. | NO WAIVER; CUMULATIVE REMEDIES                         | 546 |
| 17. | LAW AND JURISDICTION                                   | 546 |

**THIS DEED ("Deed of Guarantee")** is made on

**2020**

**BETWEEN:**

- (1) **Fujitsu Limited**, a company incorporated in Japan, of 1-1, Kamikodanaka 4-chome, Nakahara-ku, Kawasaki 211-8588, Japan (the "**Guarantor**"); and
- (2) **The Commissioners for Her Majesty's Revenue and Customs** whose address is 100 Parliament Street, London, SW1A 2BQ, acting as part of the Crown ("**HMRC**")

**WHEREAS:**

- (A) On 5<sup>th</sup> January 2004, Fujitsu Services Limited, a company incorporated under the laws of England and having its registered office at 26 Finsbury Square, London, EC2A 1SL and with company number 00096056 (the "**Company**"), entered into a Services Sub-Agreement with Cap Gemini Ernst & Young UK plc, company number 00943935, now called Capgemini UK plc, ("**Capgemini**") (the "**Services Sub-Agreement**").
- (B) On [**INSERT DATE**] by way of a Deed of Variation and Novation entered into between HMRC, Capgemini and the Company ("**Deed of Variation and Novation**"), the Services Sub-Agreement was varied and novated from Capgemini to HMRC (as varied and novated, referred to in this Deed of Guarantee as the "**Prime Services Agreement**").
- (C) HMRC requested the Guarantor to guarantee the due performance of the Prime Services Agreement in accordance with the terms of this Deed of Guarantee. On [**INSERT DATE**] day of [**INSERT DATE**] the Guarantor entered into a Deed of Guarantee in respect of the Prime Services Agreement.
- (D) The Company and HMRC are now proposing to remove the scope of the VPaaS element of the Prime Services Agreement set out in Schedule 35 from the Prime Services Agreement and simultaneously contract for such VPaaS service elements (and associated services) in a new 5-Year Services Agreement executed between the Company and HMRC (referred to in this Deed of Guarantee as the "**Services Agreement**").

Now, in consideration of HMRC entering into the new Services Agreement for the Prime VPaaS Services and a simultaneous binding contract change to remove such Prime VPaaS Services from the Prime Services Agreement the Guarantor hereby agrees with HMRC with effect from [**INSERT DATE**] as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed of Guarantee, the defined terms in Schedule 1 of the Services Agreement shall, where applicable, apply.

**1.2 Interpretation**

Save to the extent that the context or the express provisions of this Deed of Guarantee otherwise require:

- (a) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed of Guarantee;
- (b) all references to Clauses are references to clauses of this Deed of Guarantee;
- (c) all references to any agreement (including this Deed of Guarantee), document or other instrument include a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned (subject to all relevant approvals and any other provision of this Deed of Guarantee expressly concerning such agreement, document or other instrument);
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a particular gender include all genders;
- (f) references to "Parties" mean the parties to this Deed of Guarantee and their successors and assignees, and references to a "Party" mean one of the Parties to this Deed of Guarantee, and its successors and assignees; and
- (g) the word "including" when used in this Deed of Guarantee shall mean "including without limitation".

## **2. THE GUARANTEE**

- 2.1 If the Company fails or has failed to fully and punctually perform its obligations under the Services Agreement in respect of the Prime VPaaS Services or commits or has committed any breach of its obligations under the Services Agreement in respect of the Prime VPaaS Services, the Guarantor, irrevocably and unconditionally, undertakes that, upon demand by HMRC, it shall, provided always that the aggregate liability of the Guarantor under this Deed of Guarantee and the Company under the Services Agreement is subject to the limitations of liability set out in Clause 28 of the Services Agreement and subject to Clauses 3.2 and 3.3 below:
- (a) guarantee to HMRC the due performance by the Company of the Company's obligations under the Services Agreement in respect of the Prime VPaaS Services and the payment of all losses, damages, costs and expenses (including court costs and legal fees on a standard basis) which may be incurred by HMRC arising out of all and any such failures or breaches; and
  - (b) as a separate, independent guarantee obligation, following default by the Company of any obligation under the Services Agreement in respect of the Prime VPaaS Services, fully, punctually and specifically take steps to remedy such default, or procure such remedy, through performance by any subsidiary or holding company of the Guarantor or a subsidiary of such holding company (both as defined in the Companies Act 2006).
- 2.2 For the avoidance of doubt, the guarantees provided under Clause 2.1 only apply to the Prime VPaaS Services and do not extend to the CHIEF VPaaS Services, the Modernisation Services and/or the Application Services all of which are outside the scope of the guarantees being provided.

### **3. ENFORCEMENT**

- 3.1 Subject to Clause 17.3 below, any demand under this Deed of Guarantee shall be in writing, addressed to the Guarantor at the address specified in Clause 14 or such other address as the Guarantor has from time to time notified to HMRC as being an address for the receipt of such demands, in accordance with Clause 14, and shall be accompanied by a statement identifying the nature of the claim by HMRC. Each such demand and statement shall be copied to the Company at its registered office or such other address as the Company has from time to time notified to HMRC as being an address for the receipt of such demands.
- 3.2 Provided that HMRC has given all requisite notices of Default to the Company pursuant to the Services Agreement and all applicable periods, if any, for the Company to cure such Default(s) have expired, HMRC, prior to making any demand under this Deed of Guarantee, shall consult with the Guarantor for a period of fifteen (15) Working Days (or such other period as shall be agreed between the Guarantor and HMRC in each case acting reasonably) on the manner in which the relevant Default under the Services Agreement shall be addressed. On the expiry of such period HMRC may either:
- (a) require the Guarantor to remedy (or procure the remedy of) the Default; or
  - (b) elect not to require the Guarantor to remedy (or procure the remedy of) the Default and, in any event, Clause 3.3 below shall apply to any demands for performance by the Guarantor under this Deed of Guarantee.
- 3.3 In addition to the defences that the Guarantor has under the Services Agreement and this Deed of Guarantee, the Guarantor shall be liable in respect of any demand under this Deed of Guarantee only if:
- (a) in the event that a demand made against the Guarantor relates to payment obligations rather than the performance obligations, the demand satisfies Clause 3.1; or
  - (b) in the event that the demand (complying with Clause 3.1 above) made against the Guarantor relates to performance obligations rather than the payment obligations, the Guarantor fails to remedy or procure the remedy of the relevant Default by the Company under the Services Agreement within thirty (30) days (or such longer period as may be agreed between the Guarantor and HMRC, in each case acting reasonably),
- and, in each case:
- (i) the aggregate liability of the Guarantor for all demands under this Deed of Guarantee does not exceed the maximum liability of the Company under the Services Agreement; and
  - (ii) in respect of a demand for payment, the period for payment under the demand is not less than ten (10) Working Days from the date upon which the Guarantor receives the relevant demand.
- 3.4 If the Guarantor is called upon to perform, fulfil and observe any or all of the terms of the Services Agreement, it shall do so on the basis of the terms and conditions of the Services Agreement including but not limited to Clause 28 of the Services Agreement

provided always that the aggregate liability of the Guarantor under this Deed of Guarantee and the Company under the Services Agreement is subject to the limitations of liability set out in Clause 28 of the Services Agreement.

#### **4. OBLIGATIONS OF GUARANTOR**

- 4.1 HMRC shall not be obliged (before taking steps to enforce this Deed of Guarantee against the Guarantor) to obtain judgment against the Company or any third party in any Court, or to make or file any claim in a bankruptcy or liquidation of the Company or any third party, or to take any action whatsoever against the Company or any third party, provided always that HMRC shall only seek to enforce the obligations (without prejudice to Clauses 3.2 and 3.3 above) of the Guarantor under this Deed of Guarantee when it is satisfied in its sole discretion that the Company is unable or unwilling to remedy any breach of its obligations under the Services Agreement.

#### **5. WARRANTIES AND REPRESENTATIONS**

- 5.1 Subject to any contrary provision of any legal opinion obtained by or otherwise relied on by HMRC in respect of this Deed of Guarantee, the Guarantor warrants and represents that it is duly incorporated and validly existing under the laws of Japan and has all power and authority to enter into and perform (or co-ordinate the performance of) the obligations contemplated by this Deed of Guarantee to be performed by it and that this Deed of Guarantee constitutes its legal, valid and binding obligation.
- 5.2 The Guarantor further warrants and represents that by entering into this Deed of Guarantee, the Guarantor will not breach any other deeds or arrangements subsisting at the date of this Deed of Guarantee.

#### **6. SET-OFF**

- 6.1 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.

#### **7. AMENDMENTS TO OBLIGATIONS UNDER THE SERVICES AGREEMENT**

- 7.1 The liabilities or obligations of the Guarantor under this Deed of Guarantee shall remain in effect and shall not be diminished or impaired, notwithstanding:
- (a) any withdrawal of any demand (including the commencement and continuance of any legal proceedings) by HMRC for payment or performance by the Company of any of its obligations under the Services Agreement or for payment thereof under this Deed of Guarantee;
  - (b) any amendment, extension, modification or waiver of any obligation of the Services Agreement or of any documents relating thereto, provided that such amendment, extension, modification or waiver is contemplated by the express provisions of the Services Agreement;
  - (c) any release of the security, provided by this Deed of Guarantee, by HMRC;
  - (d) any grant of time or indulgence, by HMRC, towards the obligations of the Company under the Services Agreement;

- (e) any compromise by HMRC of any obligations under the Services Agreement or this Deed of Guarantee and any other guarantee in respect thereof; or
- (f) the winding-up, amalgamation, reconstruction or reorganisation of the Guarantor (or the commencement of any of the foregoing).

## **8. CONTINUING SECURITY**

- 8.1 This Deed of Guarantee is irrevocable and absolute and shall be a continuing security for payment and performance of all the obligations owing to HMRC and, accordingly, it shall:
- (a) not be discharged by any partial performance (except to the extent of such partial performance) by the Company of its obligations under the Services Agreement; and
  - (b) extend to cover the unperformed part of the obligations of the Company from time to time under the Services Agreement.
- 8.2 Except as set forth in Clauses 2 and 3 above, when pursuing its rights and remedies under this Deed of Guarantee against the Guarantor, HMRC may, but shall be under no obligation to, pursue such rights and remedies as it may have against the Company, unless all of the obligations owing to HMRC shall have been satisfied by payment in full. Subject always to Clauses **Error! Reference source not found.** and **Error! Reference source not found.** above, any failure by HMRC to pursue any rights or remedies, or to collect any amounts from the Company, shall not relieve such Guarantor from its obligations under this Deed of Guarantee.

## **9. ASSIGNMENT**

- 9.1 This Deed of Guarantee shall remain in full force and effect and shall be binding upon the Guarantor and the successors and assigns of such Guarantor, and shall enure to the benefit of HMRC and the respective successors, transferees and assignees of HMRC (to the extent that the benefit and the burden of the Services Agreement have been transferred and are owing to such successor, transferee or assignee in accordance with the Services Agreement), until all the obligations owing to HMRC and the obligations of the Guarantor under this Deed of Guarantee with respect therein shall have been satisfied by payment and performance in full.
- 9.2 If the Guarantor merges with another entity or otherwise changes its group corporate structure, in either case in a way which does not result in the Guarantor ceasing to exist or does not adversely affect the legal validity of this Deed of Guarantee, no further action shall be required in relation to this Deed of Guarantee. If the Guarantor:
- (a) merges with another entity where the successor entity does not by law assume the obligations of the Guarantor under this Deed of Guarantee; or
  - (b) sells all or substantially all of its assets to another entity or otherwise changes its group corporate structure in either case in a way which results in the Guarantor ceasing to exist or otherwise adversely affects the legal validity of this Deed of Guarantee,



the Guarantor shall procure that the successor entity delivers to HMRC a guarantee in the same or substantially the same form as this Deed of Guarantee or other security acceptable to HMRC (and, upon receipt of the same, HMRC shall provide to the Guarantor a release from the Guarantor's obligations under this Deed of Guarantee).

## **10. REINSTATEMENT**

- 10.1 This Deed of Guarantee shall be reinstated if at any time any payment of any obligations must be returned by HMRC upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or the Guarantor.

## **11. PAYMENTS**

- 11.1 The Guarantor agrees that the obligations under the Services Agreement owing to the HMRC shall be paid to HMRC in the currency and at the location specified in the Services Agreement.

## **12. SEVERANCE**

- 12.1 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.

## **13. ENTIRE AGREEMENT**

- 13.1 This Deed of Guarantee is made pursuant to the Services Agreement and supersedes all prior agreements, arrangements and undertakings (other than, for the avoidance of doubt, misrepresentations made fraudulently) between the Parties other than the Services Agreement, and constitutes, with the Services Agreement, the entire agreement between the Parties relating to the subject matter of the Services Agreement and this Deed of Guarantee. No addition to or modification of any provision of this Deed of Guarantee shall be binding upon the Parties unless made by a written instrument signed by a duly authorised representative of each of the Parties.

## **14. NOTICES**

- 14.1 All notices and demands to or upon HMRC or the Guarantor under or in connection with this Deed of Guarantee shall be in writing and shall be deemed to have been duly given or made (i) if delivered by hand or courier, when delivered; or (ii) if given by mail, five calendar days after the date when deposited in the mail by certified or registered mail:
- (a) if to HMRC, for the attention of the Solicitor of HMRC and at its address or transmission number for notices provided in the Services Agreement or, if no such address or transmission number is specified, at HMRC's main office; and
  - (b) (subject always to Clause 17.3 in relation to the service of process) if to the Guarantor, for the attention of the President, at the registered office address set out above or such other address or transmission number as shall be notified by the Guarantor to HMRC for such purpose.

- 14.2 HMRC and/or the Guarantor may change its address and transmission numbers for notices and demands by giving notice in the manner provided in this Clause.

**15. THIRD PARTY RIGHTS**

Nothing in this Deed of Guarantee shall be deemed to grant any rights or benefits to any person other than the Parties or their respective successors in title or assignees, or entitle any third party to enforce any provision hereof and the Parties do not intend that any term of this Deed of Guarantee should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

**16. NO WAIVER; CUMULATIVE REMEDIES**

- 16.1 None of the terms or provisions of this Deed of Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Guarantor and HMRC.
- 16.2 HMRC shall not, by any act (except by a written instrument pursuant to Clause 16.1) or by any delay, indulgence or omission, be deemed to have waived any right or remedy hereunder. No failure to exercise, nor any delay in exercising on the part of HMRC, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege under this Deed of Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. A waiver by HMRC of any right or remedy on any occasion shall not be construed as a bar to the exercise of any right or remedy which HMRC would otherwise have on any future occasion.

**17. LAW AND JURISDICTION**

- 17.1 This Deed of Guarantee shall be governed by and construed in all respects in accordance with the laws of England. Any dispute which may arise between the Parties concerning this Deed of Guarantee shall be determined by the Courts of England and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England for such purpose.
- 17.2 The Guarantor agrees not to raise any objection to the jurisdiction of the Courts of England on the grounds of forum non conveniens.
- 17.3 The Guarantor irrevocably and unconditionally appoints Fujitsu Services Holdings plc of 22 Baker Street, London W1U 3BW as its agent for the service of process.

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

**SIGNED and DELIVERED** for and on behalf of the Guarantor

Name:

Title: