

**DATED 03/04/2019**

**CABINET OFFICE**

**and**

**[REDACTED]**

**ONLINE TESTS AND ASSESSMENT**

**PLATFORM CONTRACT**

**Contract Ref: RM6129**

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This agreement is made on 03/4/2019

**BETWEEN:**

- (1) the Minister for the Cabinet Office ("**Cabinet Office**"), whose offices are located at 100 Parliament Street London LG69(the "**Authority**"); and
- (2) [REDACTED] which is a company registered in England and Wales under company number [REDACTED] and whose registered office is at [REDACTED] (the "**Supplier**").

**RECITALS:**

- A The Authority placed a contract notice 2018/S 213-488584 on 05/11/2018 (the "**OJEU Notice**") in the Official Journal of the European Union seeking tenders from providers of Online Tests and Assessment Platform interested in entering into a contract for the supply of such Services to the Authority.
- B **NOT USED**
- C **NOT USED**
- D **NOT USED**
- E On 05/11/2018 the Authority issued an invitation to tender (the "**Invitation to Tender**") for the provision of Online Tests and Assessment Platform.
- F In response to the Invitation to Tender, the Supplier submitted the Tender to the Authority on 03/12/2018 through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- G On the basis of the Tender, the Authority selected the Supplier to enter into an agreement to provide the Services to the Authority from time to time in accordance with this Contract.

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
- 1.1.1 the singular includes the plural and vice versa;
- 1.1.2 reference to a gender includes the other gender and the neuter;
- 1.1.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- 1.1.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- 1.1.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.1.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.1.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Contract;
  - 1.1.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
  - 1.1.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 In the event of and only to the extent of any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.1.10 the Clauses;
  - 1.1.11 the Schedules (except Schedule 19 (Tender));
  - 1.1.12 Schedule 19 (Tender).

## **2. DUE DILIGENCE**

### 2.1. The Supplier acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has raised all relevant due diligence questions with the Authority before the Date; and
- 2.1.4 it has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone.

### 2.2. The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- 2.1.5 any misinterpretation of the requirements of the Authority in this Contract;
- 2.1.6 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
- 2.1.7 failure by the Supplier to undertake its own due diligence.

## **3. REPRESENTATIONS AND WARRANTIES**

### 3.1. Each Party represents and warranties that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
  - 3.1.2 this Contract is executed by its duly authorised representative;
  - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
  - 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2. The Supplier represents and warrants that:
- 3.1.5 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 3.1.6 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Contract;
  - 3.1.7 its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
  - 3.1.8 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
  - 3.1.9 if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds, as at the Commencement Date it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
  - 3.1.10 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Services by the Authority;
  - 3.1.11 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
  - 3.1.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
  - 3.1.13 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, 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

- 3.1.14 for the Contract Period and for a period of twelve (12) months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval or the prior written consent of the Authority, which shall not be unreasonably withheld.
- 3.3. Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.
- 3.4. If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5. For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.

#### **4. GUARANTEE**

- 4.1 The award of this Contract shall be conditional upon the Supplier delivering to the Authority:
- 4.1.1 an executed Guarantee from a Guarantor; and
- 4.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee,  
on or prior to the Commencement Date or on such other date as is agreed between the Parties.
- 4.2 If the Supplier fails to provide the documentation required by Clause 4.1 by the agreed date then the Authority shall be entitled to terminate this Contract in accordance with Clause 42.1.
- 4.3 The Authority may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing.

#### **5. CYBER ESSENTIALS SCHEME CONDITION**

- 5.1. Where the Authority has notified the Supplier that the award of this Contract is conditional upon receipt of a valid Cyber Essentials Scheme Basic Certificate then on or prior to the execution of this Contract, as a condition for the award of this Contract, the Supplier shall deliver to the Authority evidence of the same.
- 5.2. Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Basic Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Clause 5.1.
- 5.3. Where the Supplier is due to Process Cyber Essentials Scheme Data after the Commencement Date but before the end of the Contract Period, the Supplier shall deliver to the Authority evidence of:
- 5.1.1 a valid Cyber Essentials Scheme Basic Certificate (before the Supplier Processes any such Cyber Essentials Scheme Data); and

- 5.1.2 renewal of a valid Cyber Essentials Scheme Basic Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Clause 5.3.1.
- 5.4. In the event that the Supplier fails to comply with Clauses 5.2 or 5.3 (as applicable), the Authority reserves the right to terminate this Contract for material Default.

## **B. DURATION OF CONTRACT**

### **6. CONTRACT PERIOD**

- 6.1. This Contract shall take effect on the Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law, either:
- 6.1.1 at the end of the Initial Period; or
- 6.1.2 where the Authority elects to extend the Initial Period in accordance with Clause 6.2 below, at the end of the Extension Period.
- 6.2. The Authority may elect to extend the duration of this Contract for the Extension Period from the expiry of the Initial Period by giving the Supplier no less than three (3) Months written notice.
- 6.3. The Contract Value for the initial (2 Year) period is a maximum of £910,300 (nine hundred and ten thousand three hundred pounds)

## **C. CONTRACT PERFORMANCE**

### **7. IMPLEMENTATION PLAN**

#### **7.1 Compliance with the Implementation Plan**

- 7.1.1 The Supplier shall comply with the Implementation Plan set out in Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel).
- 7.1.2 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 7.1.3 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Authority as set out in this Contract and report to the Authority on such performance.
- 7.1.4 Changes to the Implementation Plan shall only be made in accordance with the Variation Procedure. The Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of an Authority Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 7.1.5 Where so specified by the Authority in the Implementation Plan or elsewhere in this Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

#### **7.2 Formation of the Implementation Plan**

- 7.2.1 Where the Authority requires an Implementation Plan (or parts thereof) to be provided in draft by the Supplier prior to the commencement of the provision of the Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Authority may require. The draft implementation plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 7.2.2 The Supplier shall submit the draft implementation Plan to the Authority for Approval (such decision of the Authority to Approve or not shall not be unreasonably delayed or withheld) within a period of **three weeks** from the Commencement Date. The Parties agree that the Approved Implementation Plan shall be the Implementation Plan for the purposes of Paragraph 2.1 of Schedule 4 (Implementation Plan).
- 7.2.3 Subject to Clause 7.1.4, the Supplier shall keep the Implementation Plan under review in accordance with the Authority's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

### **7.3 Rectification of Delay in Implementation**

- 7.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract:
- (a) it shall:
- (i) notify the Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
- (ii) include in its notification an explanation of the actual or anticipated impact of the Delay;
- (iii) comply with the Authority's instructions in order to address the impact of the Delay or anticipated Delay;
- (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 7.4 (Delay Payments) of Schedule 4 (Implementation Plan) shall apply.

### **7.4 Delay Payments NOT USED**

## **8. PROVISION OF SERVICES**

### **8.1 Provision of the Services**

- 8.1.1 The Supplier acknowledges and agrees that the Authority relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Contract.
- 8.1.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with the Authority's description of the Services in Schedule 2 (Services) or elsewhere in this Contract; and
- (b) are supplied in accordance with the provisions of this Contract and the Tender.
- 8.1.3 The Supplier shall perform its obligations under this Contract in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;
- (d) the Security Policy; and
- (e) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.1.3(a) to (d).

8.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- (b) subject to Clause 23.1 (Variation Procedure), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that any Services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Authority;
- (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority);
- (e) ensure that the Services are fully compatible with any Authority Property or Authority Assets used by the Supplier in connection with this Contract;
- (f) minimise any disruption to the Sites and/or the Authority's operations when providing the Services;
- (g) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (i) assign to the Authority, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (j) provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
- (k) deliver the Services in a proportionate and efficient manner;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract; and

- (m) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract.
  - (n) Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Supplier. This Contract shall not restrict the Authority from acquiring similar, equal or like Services and/or services from other entities or sources.
- 8.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

## **9. SERVICES**

### **9.1 Time of Delivery of the Services**

- 9.1.1 The Supplier shall provide the Services on the date(s) specified in the Implementation Plan or elsewhere in this Contract.

### **9.2 Location and Manner of Delivery of the Services**

- 9.2.1 Except where otherwise provided in this Contract, the Supplier shall provide the Services to the Authority through the Supplier Personnel at the Sites.
- 9.2.2 The Authority may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Authority Premises, the Authority may carry out such inspection and examination during normal business hours and on reasonable notice.

### **9.3 Undelivered Services**

- 9.3.1 In the event that any of the Services are not Delivered in accordance with Clauses 8.1 (Provision of the Services and/or Services), 9.1 (Time of Delivery of the Services) and 9.2 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 9.3.2 The Authority may, at its discretion and without prejudice to any other rights and remedies of the Authority howsoever arising, deem the failure to comply with Clauses 8.1, (Provision of the Services and/or Services), 9.1 (Time of Delivery of the Services) and 9.2 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

### **9.4 Obligation to Remedy of Default in the Supply of the Services**

- 9.4.1 Subject to Clauses 34.9.2 and 34.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clauses 9.3.2 (Undelivered Services) and 39 (Authority Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in Clauses 8.1 and 9 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and
  - (b) meet all the costs of, and incidental to, the performance of such remedial work.

### **9.5 Continuing Obligation to Provide the Services**

- 9.5.1 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by the Authority to pay any Contract Charges,
- 9.6 unless the Supplier is entitled to terminate this Contract under Clause 43.1 (Termination on Authority Cause for Failure to Pay) for failure by the Authority to pay undisputed Contract Charges.

## **10. GOODS NOT USED**

## **11. INSTALLATION WORKS**

- 11.1 The Supplier shall perform the Installation Works in accordance with Annex 3 to Schedule 2 (Services). Where the Supplier reasonably believes it has completed the Installation Works it shall notify the Authority in writing. Following receipt of such notice, the Authority shall inspect the Installation Works and shall, by giving written notice to the Supplier:
- 11.1.1 accept the Installation Works, or
  - 11.1.2 reject the Installation Works and provide reasons to the Supplier if, in the Authority's reasonable opinion, the Installation Works do not meet the requirements set out in Annex 3 to Schedule 2 (Services) (or elsewhere in this Contract).
- 11.2 If the Authority rejects the Installation Works in accordance with Clause 11.1, the Supplier shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Annex 3 to Schedule 2 (Services) (or elsewhere in this Contract), the Authority may terminate this Contract for material Default.
- 11.3 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Authority in accordance with Clause 11.1.1. Notwithstanding the acceptance of any Installation Works in accordance with Clause 11.1 (Installation Works), the Supplier shall remain solely responsible for ensuring that the Services and the Installation Works conform to the specification in Annex 3 to Schedule 2 (Services) (or elsewhere in this Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the Installation Works.
- 11.4 Throughout the Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Personnel to carry out the Installation Works.

## **12. STANDARDS AND QUALITY**

- 12.1 The Supplier shall at all times during the Contract Period comply with the Standards and Schedule 7 (Standards) and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 12.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Authority, of the Services. The adoption of any such new or emergent standard, or changes to

existing Standards, shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Schedule 7 (Standards) shall, in addition, require the Approval of the Authority.

- 12.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt of the Services is explained to the Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 12.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval and shall be implemented within an agreed timescale.
- 12.5 Where a standard, policy or document is referred to in Schedule 7 (Standards) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

### **13. TESTING**

- 13.1 The Parties shall comply with any provisions set out in the Test Plan.

### **14. SERVICE LEVELS AND SERVICE CREDITS**

- 14.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 14.2 The Supplier shall at all times during the Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 14.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and that it shall entitle the Authority to the rights set out in Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 14.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 14.5 A Service Credit shall be the Authority's exclusive financial remedy for a Service Level Failure except where:
- 14.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
- 14.5.2 the Service Level Failure:
- (a) exceeds the relevant Service Level Threshold;
  - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
  - (c) results in:
    - (i) the corruption or loss of any Authority Data (in which case the remedies under Clause 35.2.8 (Protection of Authority Data) shall also be available); and/or

- (ii) the Authority being required to make a compensation payment to one or more third parties; and/or
- 14.5.3 the Authority is otherwise entitled to or does terminate this Contract pursuant to Clause 42 (Authority Termination Rights) except Clause 42.6 (Termination Without Cause).
- 14.6 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Contract Charges as a result of such changes, provided that:
  - 14.6.1 the total number of Service Level Performance Criteria does not exceed ten (10);
  - 14.6.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and
  - 14.6.3 there is no change to the Service Credit Cap.

#### **15. CRITICAL SERVICE LEVEL FAILURE**

- 15.1 On the occurrence of a Critical Service Level Failure:
  - 15.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
  - 15.1.2 the Authority shall (subject to the Service Credit Cap set out in Clause 37.2.1(a) (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),
    - provided that the operation of this Clause 15.1 shall be without prejudice to the right of the Authority to terminate this Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.
- 15.2 The Supplier:
  - 15.2.1 agrees that the application of Clause 15.1 is commercially justifiable where a Critical Service Level Failure occurs; and
  - 15.2.2 acknowledges that it has taken legal advice on the application of Clause 15.1 and has had the opportunity to price for that risk when calculating the Contract Charges.

#### **16. BUSINESS CONTINUITY AND DISASTER RECOVERY**

- 16.1 The Parties shall comply with the provisions of Schedule 9 (Business Continuity and Disaster Recovery).

#### **17. DISRUPTION**

- 17.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 17.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.

- 17.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Contract.
- 17.4 If the Supplier's proposals referred to in Clause 17.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may terminate this Contract for material Default.
- 17.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely due to an Authority Cause, then subject to Clause 18 (Supplier Notification of Authority Cause), an appropriate allowance by way of an extension of time will be Approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **18. SUPPLIER NOTIFICATION OF AUTHORITY CAUSE**

- 18.1 Without prejudice to any other obligations of the Supplier in this Contract to notify the Authority in respect of a specific Authority Cause (including the notice requirements under Clause 43.1.1 (Termination on Authority Cause for Failure to Pay)), the Supplier shall notify the Authority as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that a Authority Cause has occurred or is reasonably likely to occur, giving details of:
- 18.1.1 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract; and
- 18.1.2 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 18.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## **19. CONTINUOUS IMPROVEMENT**

- 19.1 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 19 with a view to reducing the Authority's costs (including the Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority. As part of this obligation the Supplier shall identify and report to the Authority once every twelve (12) months:
- 19.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- 19.1.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- 19.1.3 changes to the Sites, business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Authority; and/or
- 19.1.4 changes to the Sites, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.

- 19.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 19.3 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Authority.

#### **D. CONTRACT GOVERNANCE**

##### **20. PERFORMANCE MONITORING**

- 20.1 The Supplier shall comply with the monitoring requirements set out in Part B (Performance Monitoring) of Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

##### **21. REPRESENTATIVES**

- 21.1 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 21.2 The initial Supplier Representative shall be the person notified to the Authority in writing by the Supplier within (5) Working Days of the Commencement Date. Any change to the Supplier Representative shall be agreed in accordance with Clause 28 (Supplier Personnel).
- 21.3 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Commencement Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

##### **22. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

- 22.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
- 22.2 The Supplier shall:
- 22.2.1 keep the records and accounts referred to in Clause 22.1 in accordance with Good Industry Practice and Law; and
- 22.2.2 afford any Auditor access to the records and accounts referred to in Clause 22.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 22.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:
- (a) verify the accuracy of the Contract Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract);

- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
- (c) verify the Open Book Data;
- (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or the Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- (g) obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (i) carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (k) review any Performance Monitoring Reports provided under Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Contract;
- (m) review the Supplier's quality management systems (including any quality manuals and procedures);
- (n) review the Supplier's compliance with the Standards;
- (o) inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- (p) review the integrity, confidentiality and security of the Authority Data.

22.3 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.

22.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

22.4.1 all reasonable information requested by the Authority within the scope of the audit;

22.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and

22.4.3 access to the Supplier Personnel.

22.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 22, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

## 23. CHANGE

### 23.1 Variation Procedure

23.1.1 Subject to the provisions of this Clause 23 and Schedule 3 (Contract Charges, Payment and Invoicing), either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

23.1.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.

23.1.3 Where the Authority has so specified on receipt of a Variation Form from the Supplier, the Supplier shall carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:

- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Contract;
- (b) details of the cost of implementing the proposed Variation;
- (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
- (e) such other information as the Authority may reasonably request in (or in response to) the Variation request.

23.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.

23.1.5 The receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.

23.1.6 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; and/or
- (b) the Parties are unable to agree a change to the Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Authority may:

- (i) agree to continue to perform its obligations under this Contract without the Variation;  
or

- (ii) terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services ordered in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

23.1.7 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.

## **23.2 Legislative Change**

23.2.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a:

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

23.2.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 23.2.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including:
  - (i) whether any Variation is required to the provision of the Services, the Contract Charges or this Contract; and
  - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Authority with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
  - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 19 (Continuous Improvement), has been taken into account in amending the Contract Charges.

23.2.3 Any change in the Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 23.2.1(b)) shall be implemented in accordance with the Variation Procedure.

## **E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **24. CONTRACT CHARGES AND PAYMENT**

#### **24.1 Contract Charges**

24.1.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the undisputed Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Schedule 3 (Contract Charges, Payment and Invoicing).

24.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 13 (Testing), 22 (Records, Audit Access and Open Book Data), 35.4 (Transparency and Freedom of Information) and 35.5 (Protection of Personal Data).

24.1.3 If the Authority fails to pay any undisputed Contract Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## **24.2 VAT**

24.2.1 The Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.

24.2.2 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under Clause 24.2 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

## **24.3 Retention and Set Off**

24.3.1 The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.

24.3.2 If the Authority wishes to exercise its right pursuant to Clause 24.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Contract Charges.

24.3.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

## **24.4 Foreign Currency**

24.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Authority.

24.4.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause 24.4.1 by the Supplier.

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

24.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.
- 24.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 24.5.1, the Supplier shall ensure that its contract with the Worker contains the following requirements:
- (a) that the Authority may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 24.5.1, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;
  - (b) that the Worker's contract may be terminated at the Authority's request if:
    - (i) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 24.5.2(a); and/or
    - (ii) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clauses 24.5.1(a) or 24.5.1(b) or confirms that the Worker is not complying with those requirements; and
  - (c) That the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **25. PROMOTING TAX COMPLIANCE**

- 25.1 This Clause 25 shall apply if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds during the Contract Period. If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 25.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - 25.1.2 promptly provide to the Authority:
    - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 25.2 In the event that the Supplier fails to comply with this Clause 25 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.

## **26. BENCHMARKING**

- 26.1 Notwithstanding the Supplier's obligations under Clause 19 (Continuous Improvement), the Authority shall be entitled to regularly benchmark the Contract Charges and level of performance by the Supplier of the supply of the Services, against other suppliers providing Services substantially the same as the Services during the Contract Period.

26.2 The Authority, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 26.1 above.

26.3 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Authority in order to undertake the benchmarking and such information requirements shall be at the discretion of the Authority.

26.4 Where, as a consequence of any benchmarking carried out by the Authority, the Authority decides improvements to the Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Authority.

## **F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

### **27. KEY PERSONNEL NOT USED**

### **28. SUPPLIER PERSONNEL**

#### **28.1 Supplier Personnel**

28.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Authority Premises, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
  - (iii) obey all lawful instructions and reasonable directions of the Authority (including if so required by the Authority, the ICT Policy) and provide the Services to the reasonable satisfaction of the Authority; and
  - (iv) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements set out in Schedule 8 (Security);
- (c) subject to Schedule 11 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (g) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the Expiry Date.

28.1.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

28.1.3 The decision of the Authority as to whether any person is to be refused access to the Authority Premises shall be final and conclusive.

## **28.2 Relevant Convictions**

28.2.1 For each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

28.2.2 NOT USED

## **29. STAFF TRANSFER NOT USED**

## **30. SUPPLY CHAIN RIGHTS AND PROTECTION**

### **30.1 Appointment of Sub-Contractors**

30.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract in the Delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.

30.1.2 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall notify the Authority and provide the Authority with:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.

30.1.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 30.1.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract; and
- (b) any further information reasonably requested by the Authority.

- 30.1.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 30.1.2 (or, if later, receipt of any further information requested pursuant to Clause 30.1.3), object to the appointment of the relevant Sub-Contractor if they consider that:
- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under this Contract;
  - (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - (c) the proposed Sub-Contractor employs unfit persons,

in which case, the Supplier shall not proceed with the proposed appointment.

30.1.5 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause 30.1.2; and
  - (ii) any further information requested by the Authority pursuant to Clause 30.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority in accordance with Clause 32.2 (Appointment of Key Sub-Contractors),

the Supplier may proceed with the proposed appointment.

## **30.2 Appointment of Key Sub-Contractors not used**

## **30.3 Supply Chain Protection**

30.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) conferring a right to the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- (e) requiring a Sub-Contractor to advertise and award any of its own Sub-Contracts to the same extent as required of the Supplier, as set out at Clause 30.3.4; and
- (f) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 30.3.1; and

30.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;

- (b) include within the Performance Monitoring Reports required under Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 30.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
- 30.3.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 30.3.4 The Supplier shall ensure that all Sub-Contracts, which the Supplier intends to procure following the date of this Contract and which the Supplier has not, before the date of this Contract, already awarded to a particular Sub-Contractor, are advertised and awarded following a fair, transparent and competitive process proportionate to the nature and value of the Sub-Contract.
- 30.3.5 Notwithstanding any provision of Clauses 35.3 (Confidentiality) and 36 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

#### **30.4 Cyber Essentials Scheme**

- 30.4.1 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Clause 5.

#### **30.5 Termination of Sub-Contracts**

- 30.5.1 The Authority may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 42 (Authority Termination Rights) except Clause 42.6 (Termination Without Cause); and/or
  - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

- (iii) **Competitive Terms**

- 30.5.2 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment,

software, Services or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) subject to Clause 30.5 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

30.5.3 If the Authority exercises the option pursuant to Clause 30.6.1, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

30.5.4 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- (b) any reduction in the Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

### **30.6 Retention of Legal Obligations**

30.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to this Clause 30 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## **G. PROPERTY MATTERS**

### **31. AUTHORITY PREMISES**

#### **31.1 Licence to occupy Authority Premises**

31.1.1 Any Authority Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Authority Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract and in accordance with Schedule 10 (Exit Management).

31.1.2 The Supplier shall limit access to the Authority Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Authority Premises as the Authority may reasonably request.

31.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2 (Due Diligence), should the Supplier require modifications to the Authority Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake any modification work which it approves pursuant to this Clause 31.1.3 without undue delay. Ownership of such modifications shall rest with the Authority.

31.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Authority Premises and conduct of personnel at the

Authority Premises as determined by the Authority, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 31.1.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any Authority Premises in any manner it sees fit.

### **31.2 Security of Authority Premises**

- 31.2.1 The Authority shall be responsible for maintaining the security of the Authority Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Authority while on the Authority Premises.
- 31.2.2 The Authority shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

## **32. AUTHORITY PROPERTY**

- 31.1. Where the Authority issues Authority Property free of charge to the Supplier such Authority Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Authority Property.
- 31.2. The Supplier shall not in any circumstances have a lien or any other interest on the Authority Property and at all times the Supplier shall possess the Authority Property as fiduciary agent and bailee of the Authority.
- 31.3. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Authority Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Authority Property separately and securely and ensure that it is clearly identifiable as belonging to the Authority.
- 31.4. The Authority Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within five (5) Working Days of receipt.
- 31.5. The Supplier shall maintain the Authority Property in good order and condition (excluding fair wear and tear) and shall use the Authority Property solely in connection with this Contract and for no other purpose without Approval.
- 31.6. The Supplier shall ensure the security of all the Authority Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Authority's Security Policy and the Authority's reasonable security requirements from time to time.
- 31.7. The Supplier shall be liable for all loss of, or damage to the Authority Property, (excluding fair wear and tear), unless such loss or damage was solely caused by an Authority Cause. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in or losses or damage occurring to the Authority Property.

### **33. SUPPLIER EQUIPMENT**

- 33.1 The Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 33.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Authority Premises without obtaining Approval.
- 33.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal.
- 33.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 33.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Service Level Performance Measures.
- 33.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Authority Premises in a safe, serviceable and clean condition.
- 33.7 The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- 33.7.1 remove from the Authority Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with this Contract; and
- 33.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 33.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes two (2) or more Service Failures in any twelve (12) Month period, the Supplier shall notify the Authority in writing and shall, at the Authority's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

## **H. INTELLECTUAL PROPERTY AND INFORMATION**

### **34. INTELLECTUAL PROPERTY RIGHTS**

#### **34.1 Allocation of title to IPR**

- 34.1.1 Save as expressly granted elsewhere under this Contract:
- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
- (i) the Supplier Background IPR; and
- (ii) the Third Party IPR.

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

- (i) Authority Background IPR;
- (ii) Authority Data; and
- (iii) Project Specific IPRs.

34.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 34.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

34.1.4 Unless the Authority otherwise agrees in advance in writing (and subject to Clause 34.11.4):

(a) Project Specific IPR Items shall be created in a format, or able to be converted into a format, which is:

- (i) suitable for publication by the Authority as Open Source; and
- (ii) based on Open Standards (where applicable);

(b) where the Project Specific IPR Items are written in a format that requires conversion before publication as Open Source or before complying with Open Standards, the Supplier shall also provide the converted format to the Authority.

#### **34.2 Assignments granted by the Supplier: Project Specific IPR**

34.2.1 The Supplier hereby assigns to the Authority with full guarantee (or shall procure from the first owner the assignment to the Authority), title to and all rights and interest in the Project Specific IPRs. The assignment under this Clause 34.2.1 shall take effect as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs.

34.2.2 The Supplier shall execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Authority.

34.2.3 To the extent that it is necessary to enable the Authority to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.

#### **34.3 Licences granted by the Supplier: Supplier Background IPR**

34.3.1 The Supplier hereby grants to the Authority for the term of this contract, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.

34.3.2 At any time during the Contract Period or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 34.3.1

by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Authority Cause which constitutes a material breach of the terms of Clauses 34.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

34.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 34.3.2, the Authority shall:

- (a) immediately cease all use of the Supplier Background IPR;
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
- (c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing Supplier Background IPR.

#### **34.4 Authority's right to sub-license**

34.4.1 The Authority may sub-license:

- (a) the rights granted under Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-license is on terms no broader than those granted to the Authority; and
  - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) for purposes relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Authority.

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

34.5.1 The Authority may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 34.3 (Licences granted by the Supplier: Supplier Background IPR) to:

- (i) a Central Government Body; or
- (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

34.5.2 Where the Authority is a Central Government Body, any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 34.3 (Licences granted by the Supplier: Supplier

Background IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 34.3 (Licences granted by the Supplier: Supplier Background IPR).

- 34.5.3 If a licence granted in Clause 34.3 (Licences granted by the Supplier: Supplier Background IPR) is novated under Clause 34.5.1 or there is a change of the Authority's status pursuant to Clause 34.5.2 (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Authority.

#### **34.6 Third Party IPR**

- 34.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Authority on terms at least equivalent to those set out in Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) and Clause 34.5.1 (Authority's right to assign/novate licences). If the Supplier cannot obtain for the Authority a licence in accordance with the licence terms set out in Clause 34.3 (Licences granted by the Supplier: Supplier Background IPR) and Clause 34.5.1 (Authority's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
  - (b) only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.
- 34.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than those on which such software is usually made available.
- 34.6.3 Without prejudice to any other right or remedy of the Authority, if the Supplier becomes aware at any time, including after termination, that any Intellectual Property Rights for which the Authority does not have a licence in accordance with Clause 34.2.3 subsist in the Project Specific IPR Items, then the Supplier must notify the Authority within 10 days of what those rights are and which parts of the Project Specific IPR Items they are found in.

#### **34.7 Licence granted by the Authority**

- 34.7.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority Background IPR, the Project Specific IPRs and the Authority Data solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 35.3 (Confidentiality); and
  - (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

#### **34.8 Termination of licences**

- 34.8.1 Subject to Clauses 34.3.2 and/or 34.3.3 (Licences granted by the Supplier: Supplier Background IPR), all licences granted pursuant to this Clause 34 (Intellectual Property

Rights) (other than those granted pursuant to Clause 34.6 (Third Party IPR) and 34.7.1 (Licence granted by the Authority)) shall survive the Expiry Date.

34.8.2 The Supplier shall, if requested by the Authority in accordance with Schedule 10 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

34.8.3 The licence granted pursuant to Clause 34.7.1 (Licence granted by the Authority ) and any sub-licence granted by the Supplier in accordance with Clause 34.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Supplier shall:

- (a) immediately cease all use of the Authority Background IPR and the Authority Data (as the case may be);
- (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Authority Background IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Authority Background IPR and/or Authority Data.

### **34.9 IPR Indemnity**

34.9.1 The Supplier shall at during and after the Contract Period, on written demand indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

34.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other Services;
  - (iii) there is no additional cost to the Authority; and
  - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.

34.9.3 If the Supplier elects to procure a licence in accordance with Clause 34.9.2(a) or to modify or replace an item pursuant to Clause 34.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (i) the Authority may terminate this Contract by written notice with immediate effect; and
- (ii) without prejudice to the indemnity set out in Clause 34.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute Services including the additional costs of procuring, implementing and maintaining the substitute items.

#### **34.10 Open Source Publication**

34.10.1 Subject to Clause 34.10.3, the Supplier agrees that the Authority may at its sole discretion publish as Open Source all or part of the Project Specific IPR Items after the Operational Services Commencement Date (such date to be notified by the Authority to the Supplier).

34.10.2 Subject to Clause 34.10.3, the Supplier hereby warrants that the Project Specific IPR Items:

- (a) are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Authority will not enable a third party to use the published Project Specific IPRs or Project Specific IPR Items in any way, which could reasonably be foreseen to compromise the operation, running or security of the Project Specific IPRs or the Authority System;
- (b) have been developed by the Supplier using reasonable endeavours to ensure that publication by the Authority of the same shall not cause any harm or damage to any party using the published Project Specific IPRs;
- (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
- (d) do not contain any IPRs which have not been licensed to the Authority under licence terms which permit the publication of the Project Specific IPR Items as Open Source by the Authority;
- (e) will be supplied in a format suitable for publication as Open Source (“the Open Source Publication Material”) no later than the date notified to the Supplier under Clause 34.10.1; and
- (f) do not contain any Malicious Software.

34.10.3 The Supplier hereby acknowledges and agrees that any Supplier Background IPRs which it includes in the Open Source Publication Material supplied to the Authority pursuant to Clause 34.10.2(e) and which have not been Approved for exclusion under Clause 34.10.4 will become Open Source and will hereby be licensed to the Authority under the Open Source licence terms adopted by the Authority and treated as such following publication by the Authority.

34.10.4 Where the Authority has Approved a request by the Supplier under Clause 34.1.4, for any part of the Project Specific IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Background IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

- (a) as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
- (b) include in the written details provided under Clause 34.10.4(a) information about the impact that inclusion of such IPRs and items or Deliverables based on such IPRs will have on any other Project Specific IPRs Items and the Authority's ability to publish such other items or Deliverables as Open Source.

## **35. SECURITY AND PROTECTION OF INFORMATION**

### **35.1 Security Requirements**

- 35.1.1 The Supplier shall comply with the Security Policy and the requirements of Schedule 8 (Security) including the Security Management Plan and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 35.1.2 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 35.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Charges shall then be subject to the Variation Procedure.
- 35.1.4 Until and/or unless a change to the Contract Charges is agreed by the Authority pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

### **35.2 Protection of Authority Data**

- 35.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 35.2.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise Approved by the Authority.
- 35.2.3 To the extent that the Authority Data is held and/or Processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority and in the format (if any) specified by the Authority and in any event as specified by the Authority from time to time in writing.
- 35.2.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 35.2.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 35.2.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan.

- 35.2.7 If at any time the Supplier suspects or has reason to believe that the Authority Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 35.2.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 9 (Business Continuity and Disaster Recovery) or as required by the Authority and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 9 (Business Continuity and Disaster Recovery) or as required by the Authority.

### **35.3 Confidentiality**

- 35.3.1 For the purposes of this Clause 35.3, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 35.3.2 Except to the extent set out in this Clause 35.3 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
  - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
  - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 35.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 35.4 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
  - (b) the need for such disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
    - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or

- (iii) the conduct of a Central Government Body review in respect of this Contract; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such information was obtained from a third party without obligation of confidentiality;
- (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; and
- (g) the information is independently developed without access to the Disclosing Party's Confidential Information.

35.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

35.3.5 Subject to Clauses 35.3.2, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this Contract.

35.3.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 35.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

35.3.7 The Authority may disclose the Confidential Information of the Supplier:

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 35.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 35.3.

35.3.8 Nothing in this Clause 35.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

35.3.9 In the event that the Supplier fails to comply with Clauses 35.3.2 to 35.3.5, the Authority reserves the right to terminate this Contract for material Default.

#### **35.4 Transparency and Freedom of Information**

35.4.1 The Parties acknowledge that

- (a) the Transparency Reports; and
- (b) the content of this Contract, including any changes to the Contract agreed from time to time, except for –
  - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
  - (ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

35.4.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority 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 redacted). The Authority 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.

35.4.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 20 (Transparency Reports).

35.4.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority 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 Authority 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.

35.4.5 The Authority 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 the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

35.4.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 34.4.7(c) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

- 35.4.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information held on behalf of the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 35.4.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority 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.

### **35.5 Protection of Personal Data**

- 35.6 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in Schedule 22. The only processing that the Processor is authorised to do is listed in Schedule 22 by the Controller and may not be determined by the Processor.
- 35.7 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 35.8 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 35.8.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 35.8.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 35.8.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 35.8.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 35.9 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- 35.9.1 process that Personal Data only in accordance with Schedule 22, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- 35.9.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
- (a) nature of the data to be protected;
  - (b) harm that might result from a Data Loss Event;
  - (c) state of technological development; and
  - (d) cost of implementing any measures;
- 35.9.3 ensure that :
- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 22;
  - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Processor's duties under this clause;
    - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 35.9.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 35.9.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 35.10 Subject to clause 43.8, the Processor shall notify the Controller immediately if it:
- 35.10.1 receives a Data Subject Request (or purported Data Subject Request);

- 35.10.2 receives a request to rectify, block or erase any Personal Data;
- 35.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 35.10.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- 35.10.5 receives 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; or
- 35.10.6 becomes aware of a Data Loss Event.
- 35.11 The Processor's obligation to notify under clause 43.7 shall include the provision of further information to the Controller in phases, as details become available.
- 35.12 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 43.7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 35.12.1 the Controller with full details and copies of the complaint, communication or request;
- 35.12.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- 35.12.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- 35.12.4 assistance as requested by the Controller following any Data Loss Event;
- 35.12.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 35.13 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 35.13.1 the Controller determines that the processing is not occasional;
- 35.13.2 the Controller determines 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; or
- 35.13.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 35.14 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 35.15 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 35.16 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- 35.16.1 notify the Controller in writing of the intended Sub-processor and processing;
- 35.16.2 obtain the written consent of the Controller;
- 35.16.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 43 such that they apply to the Sub-processor; and
- 35.16.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 35.17 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 35.18 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 35.19 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **36. PUBLICITY AND BRANDING**

- 43.1. The Supplier shall not:
- 36.1.1 make any press announcements or publicise this Contract in any way; or
- 36.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,
- 36.1.3 without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).
- 43.2. Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, Services and Supplier Equipment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **I. LIABILITY AND INSURANCE**

### **37. LIABILITY**

#### **37.1 Unlimited Liability**

- 37.1.1 Neither Party excludes or limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Services Act 1979 or section 2 of the Supply of Services and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

37.1.2 The Supplier does not exclude or limit its liability in respect of the Indemnity in Clause 34.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the Indemnity therein.

### **37.2 Financial Limits**

37.2.1 Subject to Clause 37.1.1 (Unlimited Liability), the Supplier's total aggregate liability:

(a) in respect of all:

- (i) Service Credits; and
- (ii) Compensation for Critical Service Level Failure;

incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;

(b) in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:

- (i) in relation to any Defaults occurring from the Commencement Date to the end of the first Contract Year, the higher of ten million pounds (£10,000,000)] or a sum equal to [one hundred and fifty per cent (150%) of the Estimated Year 1 Contract Charges;
- (ii) in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Contract Period, the higher of ten million pounds (£10,000,000) in each such Contract Year or a sum equal to one hundred and fifty per cent (150%) of the Contract Charges payable to the Supplier under this Contract in the previous Contract Year; and
- (iii) in relation to any Defaults occurring in each Contract Year that commences after the end of the Contract Period, the higher of ten million pounds (£10,000,000) in each such Contract Year or a sum equal to one hundred and fifty per cent (150%) of the Contract Charges payable to the Supplier under this Contract in the last Contract Year commencing during the Contract Period.

37.2.2 Subject to Clauses 37.1.1 (Unlimited Liability) and 37.2.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Authority's total aggregate liability in respect of all Losses as a result of Authority Causes shall be limited to:

- (a) in relation to any Authority Causes occurring from the Commencement Date to the end of the first Contract Year, a sum equal to the Estimated Year 1 Contract Charges;
- (b) in relation to any Authority Causes occurring in each subsequent Contract Year that commences during the remainder of the Contract Period, a sum equal to the Contract Charges payable to the Supplier under this Contract in the previous Contract Year; and
- (c) in relation to any Authority Causes occurring in each Contract Year that commences after the end of the Contract Period, a sum equal to the Contract Charges payable to the Supplier under this Contract in the last Contract Year commencing during the Contract Period.

### **37.3 Non-recoverable Losses**

37.3.1 Subject to Clause 37.1.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

- (a) indirect, special or consequential Loss;

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

#### **37.4 Recoverable Losses**

37.4.1 Subject to Clause 37.2.1 (Financial Limits), and notwithstanding Clause 37.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

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

#### **37.5 Miscellaneous**

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

37.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 37.2.1 (Financial Limits).

37.5.3 Subject to any rights of the Customer under this Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Contract shall be dealt with in accordance with the provisions of Schedule 16 (Conduct of Claims).

### **38. INSURANCE**

38.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract, and shall procure that Sub-Contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 15 (Insurance Requirements).

38.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Contract.

## **J. REMEDIES AND RELIEF**

### **39. AUTHORITY REMEDIES FOR DEFAULT**

#### **39.1 Remedies**

39.1.1 Without prejudice to any other right or remedy of the Authority howsoever arising (including under Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 14.5 (Service Levels and Service Credits), if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
  - (i) instruct the Supplier to comply with the Rectification Plan Process;
  - (ii) suspend this Contract (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
  - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

39.1.2 Where the Authority exercises any of its step-in rights under Clauses 39.1.1(c)(ii) or 39.1.1(c)(iii), the Authority shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services and/or Replacement Services.

## **39.2 Rectification Plan Process**

39.2.1 Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 39.1.1(c)(i):

- (a) the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within five (5) Working Days (or such other period as may be agreed between the Parties) from the date of Authority's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
  - (i) full details of the Default that has occurred, including a root cause analysis;
  - (ii) the actual or anticipated effect of the Default; and
  - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

39.2.2 The Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter

to be determined by an expert in accordance with paragraph 5 of Schedule 12 (Dispute Resolution Procedure).

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

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Default; and/or
- (d) will rectify the Default but in a manner which is unacceptable to the Authority.

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

39.2.5 If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

#### **40. SUPPLIER RELIEF DUE TO AUTHORITY CAUSE**

48.1. If the Supplier has failed to:

- 40.1.1 Achieve a Milestone by its Milestone Date;
- 40.1.2 provide the Services in accordance with the Service Levels;
- 40.1.3 comply with its obligations under this Contract,

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

- 2. and can demonstrate that the Supplier Non-Performance would not have occurred but for a Authority Cause, then (subject to the Supplier fulfilling its obligations in Clause 18 (Supplier Notification of Authority Cause)):
  - (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
  - (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 42 (Authority Termination Rights) except Clause 42.6 (Termination Without Cause);
  - (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
    - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
    - (ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and/or
  - (d) where the Supplier Non-Performance constitutes a Service Level Failure:

- (i) the Supplier shall not be liable to accrue Service Credits;
- (ii) the Authority shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 15 (Critical Service Level Failure); and
- (iii) the Supplier shall be entitled to invoice for the Contract Charges for the provision of the relevant Services affected by the Authority Cause,
- (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Authority Cause.

40.2 In order to claim any of the rights and/or relief referred to in Clause 40.1, the Supplier shall:

40.2.1 comply with its obligations under Clause 18 (Notification of Authority Cause); and

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

- (a) the Supplier Non-Performance;
- (b) the Authority Cause and its effect on the Supplier’s ability to meet its obligations under this Contract; and
- (c) the relief claimed by the Supplier.

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

40.4 Without prejudice to Clauses 9.5 (Continuing obligation to provide the Services) and 10.10 (Continuing obligation to provide the Services), if a Dispute arises as to:

- 40.4.1 whether a Supplier Non-Performance would not have occurred but for a Authority Cause; and/or
- 40.4.2 the nature and/or extent of the relief claimed by the Supplier,

- 3. either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

40.5 Any Variation that is required to the Implementation Plan or to the Contract Charges pursuant to this Clause 40 shall be implemented in accordance with the Variation Procedure.

#### **41. FORCE MAJEURE**

41.1 Subject to the remainder of Clause 41 (and, in relation to the Supplier, subject to its compliance with any obligations in Clause 16 (Business Continuity and Disaster Recovery)) a Party may claim relief under Clause 41 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 41.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 41.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 41 to the extent that consequences of the relevant Force Majeure Event:
- 41.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or
- 41.3.2 should have been foreseen and prevented or avoided by a prudent provider of Services similar to the Services, operating to the standards required by this Contract.
- 41.4 Subject to Clause 41.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 41.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 41.6 Where, as a result of a Force Majeure Event:
- 41.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
- (b) the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;
- 41.6.2 the Supplier fails to perform its obligations in accordance with this Contract:
- (a) the Authority shall not be entitled:
- (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 39.1.1(b) and 39.1.1(c) (Authority Remedies for Default) as a result of such failure;
- (ii) to receive Delay Payments pursuant to Clause 7.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
- (iii) to receive Service Credits or withhold and retain any of the Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 15 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

41.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

41.8 Relief from liability for the Affected Party under this Clause 41 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 41.7.

## **K. TERMINATION AND EXIT MANAGEMENT**

### **42. AUTHORITY TERMINATION RIGHTS**

#### **42.1 Termination in Relation to Guarantee**

42.1.1 This Contract is conditional on the Supplier has procuring a Guarantee pursuant to Clause 4 (Guarantee), the Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:

- (a) the Guarantor withdraws the Guarantee for any reason whatsoever;
- (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
- (c) an Insolvency Event occurs in respect of the Guarantor;
- (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever

and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority within the period of time specified by the Authority.;

- (e) the Supplier fails to provide the Guarantee and accompanying documentation required by Clause 4.1]

#### **42.2 Termination on Material Default**

42.2.1 The Authority may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
- (c) as a result of any Defaults, the Authority incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 37.2.1(a) and 37.2.1(b) (Liability);
- (d) the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 5.4 (Cyber Essentials Scheme Condition), 7.1.5 (Implementation Plan), 9.3.2 (Provision of Services), 10.3.2 and 10.5.1 (Provision of Services), 15.1 (Critical Service Failure), 17.4 (Disruption), 22.5 (Records, Audit Access and Open Book Data), 25 (Promoting Tax Compliance), 35.3.9 (Confidentiality), 51.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Schedule 11: Staff Transfer;
- (e) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or

- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process;

42.2.2 For the purpose of Clause 42.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

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

42.3.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

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

#### **42.4 Termination on Insolvency**

42.4.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

#### **42.5 Termination on Change of Control**

42.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

42.5.2 The Supplier shall ensure that any notification made pursuant to Clause 42.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

42.5.3 The Authority may terminate this Contract under Clause 42.5 by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

#### **42.6 Termination for breach of Regulations**

42.6.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

#### **42.7 Termination Without Cause**

42.7.1 The Authority shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice.

#### **42.8 Termination in Relation to Variation**

42.8.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Variation Procedure.

### **43. SUPPLIER TERMINATION RIGHTS NOT USED**

#### **44. TERMINATION BY EITHER PARTY**

##### **44.1 Termination for continuing Force Majeure Event**

44.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Contract if, in accordance with Clause 41.6.1(a) (Force Majeure).

#### **45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

45.1 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

45.2 Any suspension of this Contract under Clause 45.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

45.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Contract Charges, provided that the Supplier shall not be entitled to:

45.4 an increase in the Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 42 (Authority Termination Rights) except Clause 42.6 (Termination Without Cause); and

45.5 reject the Variation.

#### **46. CONSEQUENCES OF EXPIRY OR TERMINATION**

##### **46.1 Consequences of termination under Clauses [42.1 (Termination in Relation to Guarantee),] 42.2 (Termination on Material Default), 42.3 (Termination in Relation to Financial Standing) and 42.8 (Termination in Relation to Variation)**

46.1.1 Where the Authority:

- (a) terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 46.1; and
- (b) then makes other arrangements for the supply of the Services,

the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

##### **46.2 Consequences of termination under Clauses 42.6 (Termination without Cause) and 43.1 (Termination on Authority Cause for Failure to Pay)**

46.2.1 Where:

- (a) the Authority terminates (in whole or in part) this Contract under Clause 42.6 (Termination without Cause); or
- (b) the Supplier terminates this Contract pursuant to Clause 43.1 (Termination on Authority Cause for Failure to Pay),

the Authority shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Authority may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 42.6 (Termination without Cause).

46.2.2 The Authority shall not be liable under Clause 46.2.1 to pay any sum which:

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

**46.3 Consequences of termination under Clause 44.1 (Termination for Continuing Force Majeure Event)**

46.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clause 44.1 (Termination for Continuing Force Majeure Event).

**46.4 Consequences of Termination for Any Reason**

46.4.1 Save as otherwise expressly provided in this Contract:

- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 22 (Records, Audit Access & Open Book Data), 34 (Intellectual Property Rights), 35.3 (Confidentiality), 35.4 (Transparency and Freedom of Information) 35.5 (Protection of Personal Data), 37 (Liability), 46 (Consequences of Expiry or Termination), 52 (Severance), 54 (Entire Agreement), 55 (Third Party Rights) 57 (Dispute Resolution) and 58 (Governing Law and Jurisdiction), and the provisions of Schedule 1 (Definitions), Schedule 3 (Contract Charges, Payment and Invoicing), Schedule 10 (Exit Management), Schedule 11 (Staff Transfer), Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

**46.5 Exit management**

46.5.1 The Parties shall comply with the exit management provisions set out in Schedule 10 (Exit Management).

## **L. MISCELLANEOUS AND GOVERNING LAW**

### **47. COMPLIANCE**

#### **47.1 Health and Safety**

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

- (a) all applicable Law regarding health and safety; and
- (b) the Authority's health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises.

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

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

#### **47.2 Equality and Diversity**

47.2.1 The Supplier shall:

- (a) perform its obligations under this Contract (including those in relation to provision of the Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

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

47.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

#### **47.4 Environmental Requirements**

47.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Contract in accordance with the Environmental Policy of the Authority.

47.4.2 The Authority shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

### **48. ASSIGNMENT AND NOVATION**

- 48.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract or any part of it without Approval.
- 48.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Contract or any part thereof to:
- 48.2.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- 48.2.2 any private sector body which substantially performs the functions of the Authority,
1. and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 48.2.
- 48.3 A change in the legal status of the Authority shall not, subject to Clause 48.4 affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.
- 48.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a private sector body in accordance with Clause 48.2.2 (the "Transferee" in the rest of this Clause) the right of termination of the Authority in Clause 42.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee as if the references to Supplier in Clause 42.4 (Termination on Insolvency) and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee.

#### **49. WAIVER AND CUMULATIVE REMEDIES**

- 49.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clause 56 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 49.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

#### **50. RELATIONSHIP OF THE PARTIES**

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

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

- 51.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- 51.2 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 51.3 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 51.4 The Supplier shall not during the Contract Period:
- 51.4.1 commit a Prohibited Act; and/or
  - 51.4.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 51.5 The Supplier shall during the Contract Period:
- 51.5.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 51.5.2 keep appropriate records of its compliance with its obligations under Clause 51.3.1 and make such records available to the Authority on request;
  - 51.5.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
  - 51.5.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 51.6 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 51.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 51.6.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 51.6.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 51.6.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 51.7 If the Supplier makes a notification to the Authority pursuant to Clause 51.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 22 (Records, Audit Access and Open Book Data).
- 59.1. If the Supplier breaches Clause 51.3, the Authority may by notice:
- 51.8 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - 51.9 immediately terminate this Contract for material Default.
- 59.2. Any notice served by the Authority under Clause 51.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the

Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **52. SEVERANCE**

- 52.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 52.2 In the event that any deemed deletion under Clause 52.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 52.3 If the Parties are unable to resolve the Dispute arising under Clause 52 within twenty (20) Working Days of the date of the notice given pursuant to Clause 52.2, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to Clause 52.

## **53. FURTHER ASSURANCES**

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

## **54. ENTIRE AGREEMENT**

- 54.1 This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 54.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 54.3 Nothing in this Clause 54 shall exclude any liability in respect of misrepresentations made fraudulently.

## **55. THIRD PARTY RIGHTS**

- 55.1 Not used
- 55.2 Subject to Clause 55.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 55.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

55.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 55.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**56. NOTICES**

56.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 56, an e-mail is accepted as being "in writing".

56.2 Subject to Clause 56.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 56.3 and 56.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

56.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 56.2:

56.3.1 any Termination Notice (Clause 42 (Authority Termination Rights)),

56.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 49 (Waiver and Cumulative Remedies))
- (c) Default or Authority Cause; and

56.3.3 any Dispute Notice.

56.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 56.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 56.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

56.5 Clause 56 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

56.6 For the purposes of this Clause 56, the address and email address of each Party shall be

56.6.1 For the Authority: Cabinet Office

Address: 1 Horse Guards Road, London SW1A 2HQ

For the attention of: [REDACTED]

For the Supplier: [REDACTED]

## **57. DISPUTE RESOLUTION**

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

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

## **58. GOVERNING LAW AND JURISDICTION**

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

58.2 Subject to Clause 57 (Dispute Resolution) and Schedule 12 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

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

Signed duly authorised for and on behalf of the SUPPLIER

Signature: [REDACTED]

Name: [REDACTED]

Position: [REDACTED]

Date: [REDACTED]

***[Guidance Note: this document should be signed by the same supplier entity that submitted the Response to the ITT.]***

Signed for and on behalf of the AUTHORITY

Signature: [REDACTED]

Name: [REDACTED]

Position: [REDACTED]

Date: [REDACTED]

## SCHEDULE 1: DEFINITIONS

In accordance with Clause 1 (Definitions and Interpretations) of this Contract including its Recitals the following expressions shall have the following meanings:

- "Achieve"** 1 means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and **"Achieved"**, **"Achieving"** and **"Achievement"** shall be construed accordingly;
- "Acquired Rights Directive"** 2 means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
- "Additional Clauses"** 3 means the additional Clauses in Schedule 21 (Alternative and/or Additional Clauses) and any other additional Clauses set out in the Contract;
- "Affected Party"** 4 means the party seeking to claim relief in respect of a Force Majeure;
- "Affiliates"** 5 means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
- "Approval"** 6 means the prior written consent of the Authority and **"Approve"** and **"Approved"** shall be construed accordingly;
- "Approved Sub-Licensee"** 7 means any of the following:
- a) a Central Government Body;
  - b) any third party providing Services to a Central Government Body; and/or
  - c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;
- "Auditor"** 8 means:
- a) the Authority's internal and external auditors;
  - b) the Authority's statutory or regulatory auditors;
  - c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office
  - d) HM Treasury or the Cabinet Office
  - e) any party formally appointed by the Authority to carry out audit or similar review functions; and
  - f) successors or assigns of any of the above;

<b>"Authority Assets"</b>	9 means the Authority's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services;
<b>"Authority Background IPR"</b>	10 means: <ul style="list-style-type: none"> <li>a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority's Know-How, documentation, processes, software and procedures;</li> <li>b) IPRs created by the Authority independently of this Contract; and/or <ul style="list-style-type: none"> <li>11 Crown Copyright which is not available to the Supplier otherwise than under this Contract;</li> </ul> </li> </ul>
<b>"Authority Cause"</b>	12 means any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Authority is liable to the Supplier;
<b>"Authority Data"</b>	13 means: <ul style="list-style-type: none"> <li>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Authority's Confidential Information, and which: <ul style="list-style-type: none"> <li>i) are supplied to the Supplier by or on behalf of the Authority; or</li> <li>ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li> </ul> </li> <li>b) any Personal Data for which the Authority is the Controller;</li> </ul>
<b>"Authority Premises"</b>	14 means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
<b>"Authority Property"</b>	15 means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Authority in connection with this Contract;
<b>"Authority Representative"</b>	16 means the representative appointed by the Authority from time to time in relation to this Contract;
<b>"Authority Responsibilities"</b>	17 means the responsibilities of the Authority set out in the Part B of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel) and any other responsibilities of the Authority agreed in writing between the Parties from time to time in connection with this Contract;
<b>"Authority's Confidential Information"</b>	18 means:

	a)	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Authority (including all Authority Background IPR and Project Specific IPR);
	b)	any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Authority's attention or into the Authority's possession in connection with this Contract; and
	19	information derived from any of the above;
<b>"BCDR Services"</b>	20	means the Business Continuity Services and Disaster Recovery Services as defined in Schedule 9 (Business Continuity and Disaster Recovery);
<b>"BCDR Plan"</b>	21	means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 16 (Business Continuity and Disaster Recovery) and Schedule 9 (Business Continuity and Disaster Recovery);
<b>"Central Government Body"</b>	22	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	23	means any change in Law which impacts on the supply of the Services and performance of the Contract which comes into force after the Commencement Date;
<b>"Change of Control"</b>	24	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	25	means the charges raised under or in connection with this Contract from time to time;
<b>"Commencement Date"</b>	26	means 03/04/2019
<b>"Commercially Sensitive Information"</b>	27	means the Confidential information listed in Schedule 14 (Commercially Sensitive Information) comprising of commercially sensitive information relating to: - <ul style="list-style-type: none"> <li>28 (a) the pricing of the Services;</li> <li>29 (b) details of the Supplier's IPR;</li> <li>30 (c) the Supplier's business and investment plans; and/or</li> <li>31 (d) the Supplier's trade secrets;</li> </ul>

	32	which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
	33	
<b>"Comparable Supply"</b>	34	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
<b>"Compensation for Critical Service Level Failure"</b>	35	has the meaning given to it in Clause 15.1.2 (Critical Service Level Failure);
<b>"Confidential Information"</b>	36	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Contract"</b>	37	means this agreement between the Authority and the Supplier;
<b>" Contract Charges"</b>	38	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Authority under this Contract, as set out in Annex 1 of Schedule 3 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
<b>" Contract Period"</b>	39	means the term of this Contract from the Commencement Date until the Expiry Date;
<b>"Contract Value"</b>	40	The Contract Value for the initial (2 Year) period is a maximum of £910,300 (nine hundred and ten thousand three hundred pounds)
<b>" Contract Year"</b>	41	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
<b>"Control"</b>	42	means control in either of the senses defined in section 450 and 1124 of the Corporation Tax Act 2010 and and "Controlled" shall be interpreted accordingly;
<b>"Controller"</b>	43	has the meaning given to it in the GDPR, as amended from time to time;
<b>"Conviction"</b>	44	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;

45

## "Costs"

46 the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- a) the cost to the Supplier or the Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
  - i) base salary paid to the Supplier Personnel;
  - ii) employer's national insurance contributions;
  - iii) pension contributions;
  - iv) car allowances;
  - v) any other contractual employment benefits;
  - vi) staff training;
  - vii) work place accommodation;
  - viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and
  - ix) reasonable recruitment costs, as agreed with the Authority;
- b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Authority or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;
- d) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Contract Charges for those Services and are properly chargeable to the Authority in accordance with Schedule 3 (Contract Charges);

**47 NOT USED**

48 but excluding:

- a) Overhead;
- b) financing or similar costs;
- c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;

	d) taxation;
	e) fines and penalties;
	f) amounts payable under Clause 26 (Benchmarking); and
	g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);
<b>"Critical Service Level Failure"</b>	49 means any instance of critical service level failure specified in Annex 2 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Crown"</b>	50 means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Crown Body"</b>	51 means any department, office or executive agency of the Crown;
<b>"CRTPA"</b>	52 means the Contracts (Rights of Third Parties) Act 1999;
<b>"Cyber Essentials Scheme"</b>	53 means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here:  54 <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ];
<b>"Cyber Essentials Scheme Basic Certificate"</b>	55 means the certificate awarded on the basis of self assessment, varied by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>"Cyber Essentials Scheme Data"</b>	56 means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme;  57 not used
<b>"Data Loss Event"</b>	58 any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>"Data Protection Impact Assessment"</b>	59 an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;  60  61

<b>"Data Protection Legislation"</b>	62 means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>"Data Protection Officer"</b>	63 has the meaning given to it in the GDPR;
<b>"Data Subject"</b>	64 has the meaning given to it in the GDPR, as amended from time to time;;
<b>"Data Subject Request"</b>	65 a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deductions"</b>	66 means all Service Credits or any other deduction which the Authority is paid or is payable under this Contract;
<b>"Default"</b>	67 means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority;
<b>"Delay"</b>	68 means: <ul style="list-style-type: none"> <li>a) a delay in the Achievement of a Milestone by its Milestone Date; or</li> <li>b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</li> </ul> 69 NOT USED
<b>"Deliverable"</b>	70 means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Contract;
<b>"Delivery"</b>	71 means delivery in accordance with the terms of this Contract as confirmed by the issue by the Authority of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Contract and accepted by the Authority and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disclosing Party"</b>	72 has the meaning given to it in Clause 35.3.1 (Confidentiality);
<b>"Dispute"</b>	73 means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties

	to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	74 means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	75 means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure);
<b>"Documentation"</b>	76 means descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) as: <ul style="list-style-type: none"> <li>a) is required to be supplied by the Supplier to the Authority under this Contract;</li> <li>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</li> <li>c) is required by the Supplier in order to provide the Services; and/or</li> <li>d) has been or shall be generated for the purpose of providing the Services;</li> </ul>
<b>"DOTAS"</b>	77 means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>"DPA 2018"</b>	78 means the Data Protection Act 2018;
<b>"Due Diligence Information"</b>	79 means any information supplied to the Supplier by or on behalf of the Authority prior to the Commencement Date;
<b>"Employee Liabilities"</b>	80 means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

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

<b>"Employment Regulations"</b>	81 means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
<b>"Environmental Policy"</b>	82 means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Authority;
<b>"Environmental Information Regulations or EIRs"</b>	83 means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>"Estimated Year 1 Contract Charges"</b>	84 means the sum of <b>REDACTED</b> pounds estimated by the Authority to be payable by it to the Supplier as the total aggregate Contract Charges from the Commencement Date until the end of the first Contract Year;
<b>"Exit Plan"</b>	85 means the exit plan described in paragraph 5 of Schedule 10 (Exit Management);
<b>"Expedited Dispute Timetable"</b>	86 means the timetable set out in paragraph 5 of Schedule 12 (Dispute Resolution Procedure);
<b>"Expiry Date"</b>	87 means:

- a) the end date of the Initial Period; or
  - b) the end date of any Extension Period;
- 88 if this Contract is terminated before the end date of the Initial Period or Extension Period as appropriate, the earlier date of termination of this Contract in accordance with its terms;
- "Extension Period"** 89 means such period or periods up to a maximum of two twelve (12) month periods ( as may be specified by the Authority pursuant to Clause 6.2;
- "FOIA"** 90 means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- "Force Majeure"** 91 means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Supplier of its obligations arising from:
- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;
  - b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
  - c) acts of the Crown, local government or Regulatory Bodies;
  - d) fire, flood or any disaster; and
  - e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
    - i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and
    - ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
    - iii) any failure of delay caused by a lack of funds;
- "Force Majeure Notice"** 92 means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
- "Former Supplier"** 93 means a supplier supplying the Services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

<b>"Fraud"</b>	94 means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"General Anti-Abuse Rule"</b>	95 means (a) the legislation in Part 5 of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	96 means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"GDPR"</b>	97 means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"Good Industry Practice"</b>	98 means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; 99 not used
<b>"Government"</b>	100 means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Procurement Card"</b>	101 means the Government's preferred method of purchasing and payment for low value Services or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;
<b>Guarantee</b>	102 means a deed of guarantee in favour of the Authority in the form set out in Schedule 18 (Guarantee) granted pursuant to Clause 4 (Guarantee)
<b>Guarantor</b>	103 means the person acceptable to the Authority to give a Guarantee
<b>"Halifax Abuse Principle"</b>	104 means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	105 means Her Majesty's Revenue and Customs;
<b>"Holding Company"</b>	106 has the meaning given to it in section 1159 of the Companies Act 2006;
<b>"ICT Policy"</b>	107 means the Authority's policy in respect of information and communications technology, which is in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;

<b>"Impact Assessment"</b>	108 has the meaning given to it in Clause 23.1.3 (Variation Procedure);
<b>"Implementation Plan"</b>	109 means the plan set out in Part A of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel);
<b>"Information"</b>	110 has the meaning given to it under section 84 of the Freedom of Information Act 2000;
<b>"Initial Period"</b>	111 means the period from the Commencement Date until the day before the second anniversary this is the 02/04/2021;
<b>"Installation Works"</b>	112 means all works which the Supplier is to carry out at the beginning of the Contract Period to install the Services in accordance with Annex 3 to Schedule 2 (Services);
<b>"Insolvency Event"</b>	113 means, in respect of the Supplier or Guarantor (as applicable): <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h) where the Supplier or Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> </ul>

		i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
<b>"Insurances"</b>	114	shall have the meaning given to it in Paragraph 1.1 of Schedule 15 (Insurances);
<b>"Intellectual Property Rights" or "IPR"</b>	115	means <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>Invitation to Tender or "ITT"</b>	116	has the meaning given to it in Recital C to this Contract;
<b>"IPR Claim"</b>	117	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract (including any claims arising from the publication of the Project Specific IPRs as Open Source);
<b>"Joint Controllers"</b>	118	where two or more Controllers jointly determine the purposes and means of processing;
<b>"Key Personnel"</b>	119	means the individuals (if any) identified as such in Part C of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel);
<b>"Key Role(s)"</b>	120	has the meaning given to it in Clause 27.1 (Key Personnel);
<b>"Know-How"</b>	121	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Commencement Date;
<b>"Law"</b>	122	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

<b>"LED"</b>	123 means the Law Enforcement Directive (Directive (EU) 2016/680);
<b>"Losses"</b>	124 means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Man Day"</b>	125 means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	126 means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Milestone"</b>	127 means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
<b>"Milestone Date"</b>	128 means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Milestone Payment"</b>	129 means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
<b>"Month"</b>	130 means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"Occasion of Tax Non-Compliance"</b>	131 means: <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the</li> </ul>

Commencement Date or to a civil penalty for fraud or evasion;

**“OJEU Notice”**

132 has the meaning given to it in Recital A to this Contract;

**"Open Book Data "**

133 means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Contract Charges already paid or payable and Contract Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:

- a) the Supplier’s Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Services;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
  - i) the unit costs and quantity of Services and any other consumables and bought-in Services;
  - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin; and
  - iv) Reimbursable Expenses;
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- e) the Supplier Profit achieved over the Contract Period and on an annual basis;
- f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- h) the actual Costs profile for each Service Period.

**“Open Source”**

134 means computer software, computer programs, Source Code and any other material that is published for use, with rights to access and modify, by any person for free under a generally recognised open source licence;

**“Open Standards”**

135 means the open standards principles as described by Government and further detailed at

<https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles> (as may be updated from time to time);

<b>"Other Supplier"</b>	136 means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
<b>"Over-Delivered Services"</b>	137 has the meaning given to it in Clause 10.4.1 (Over-Delivered Services);
<b>"Overhead"</b>	138 means those amounts which are intended to recover a proportion of the Supplier's or the relevant Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
<b>"Parent Company"</b>	139 means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
<b>"Party"</b>	140 means the Authority or the Supplier and " <b>Parties</b> " shall mean both of them;
<b>"Performance Monitoring System"</b>	141 has the meaning given to it in paragraph 1.1.2 in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Performance Monitoring Reports"</b>	142 has the meaning given to it in paragraph 3.1 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
<b>"Personal Data"</b>	143 has the meaning given to it in the GDPR;
<b>"Personal Data Breach"</b>	144 has the meaning given to it in the GDPR;
<b>"Processor"</b>	145 has the meaning given to it in the GDPR, as amended from time to time;
<b>"Processor Personnel"</b>	146 means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
<b>"Prohibited Act"</b>	147 means any of the following: <ul style="list-style-type: none"><li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to:</li></ul>

		<ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul>
		b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
		c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; or</li> <li>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li> </ul>
<b>"Project Specific IPR"</b>	148	means: <ul style="list-style-type: none"> <li>a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</li> <li>b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;</li> </ul>
	149	but shall not include the Supplier Background IPR;
	150	
<b>"Project Specific IPR Items"</b>	151	means the items in which the Project Specific IPRs subsist;
<b>"Protective Measures"</b>	152	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Schedule [8] (Security);
<b>"Recipient"</b>	153	has the meaning given to it in Clause 35.3.1 (Confidentiality);
<b>"Rectification Plan"</b>	154	means the rectification plan pursuant to the Rectification Plan Process;

<b>"Rectification Plan Process"</b>	155	means the process set out in Clause 39.2 (Rectification Plan Process);
<b>"Registers"</b>	156	[has the meaning given to in Schedule 10 (Exit Management);
<b>"Regulations"</b>	157	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Reimbursable Expenses"</b>	158	has the meaning given to it in Schedule 3 (Contract Charges, Payment and Invoicing);
<b>"Related Supplier"</b>	159	means any person who provides Services to the Authority which are related to the Services from time to time;
<b>"Relevant Conviction"</b>	160	means: <ul style="list-style-type: none"> <li>a) a Conviction that is relevant to the nature of the Services to be provided; or</li> <li>b) <i>[Please insert relevant convictions if any]</i>;or</li> <li>c) a conviction designated as such specified elsewhere in this Contract;</li> </ul>
<b>"Relevant Requirements"</b>	161	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	162	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Relevant Transfer"</b>	163	means a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	164	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>"Relief Notice"</b>	165	has the meaning given to it in Clause 40.2.2 (Supplier Relief Due to Authority Cause);
<b>"Replacement Services"</b>	166	means any Services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the Expiry Date, whether those Services are provided by the Authority internally and/or by any third party;
<b>"Replacement Services"</b>	167	means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the Expiry Date, whether those services are provided by the Authority internally and/or by any third party;
<b>"Replacement Sub-Contractor"</b>	168	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

<b>"Replacement Supplier"</b>	169 means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Services for its own account, shall also include the Authority;
<b>"Request for Information"</b>	170 means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
<b>"Restricted Countries"</b>	171 means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
<b>"Satisfaction Certificate"</b>	172 means the certificate materially in the form of the document contained in Annex 3 to Schedule 5 (Testing) granted by the Authority when the Supplier has Achieved a Milestone or a Test;
<b>"Schedule"</b>	173 means a schedule to this Contract;
<b>"Security Management Plan"</b>	174 means the Supplier's security management plan prepared pursuant to paragraph 4 of Schedule 8 (Security) a draft of which has been provided by the Supplier to the Authority in accordance with paragraph 4 of Schedule 8 (Security) and as updated from time to time;
<b>"Security Policy"</b>	175 means the Authority's security policy in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Security Policy Framework"</b>	176 the current HMG Security Policy Framework that can be found at <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a> ;
<b>"Service Credit Cap"</b>	177 means: <ul style="list-style-type: none"> <li>a) in the period from the Commencement Date to the end of the first Contract Year <b>to be agreed with the Supplier</b>] % of the Estimated Year 1 Contract Charges; and</li> <li>b) during the remainder of the Contract Period, <b>to be agreed with the Supplier</b>% of the Contract Charges payable to the Supplier under this Contract in the period of 12 Months immediately preceding the Month in respect of which Service Credits are accrued;</li> </ul>
<b>"Service Credits"</b>	178 means any service credits specified in Annex 1 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Authority in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Failure"</b>	179 means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision

	of the Services or event which could affect the provision of the Services in the future;
<b>"Service Level Failure"</b>	180 means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
<b>"Service Level Performance Criteria"</b>	181 has the meaning given to it in paragraph 3.2 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Level Performance Measure"</b>	182 shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Level Threshold"</b>	183 shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Levels"</b>	184 means any service levels applicable to the provision of the Services under this Contract specified in Annex 1 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Period"</b>	185 has the meaning given to in paragraph 4.1 of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Transfer"</b>	186 means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>"Service Transfer Date"</b>	187 means the date of a Service Transfer;
	188 NOT USED
<b>"Services"</b>	189 means the services to be provided by the Supplier to the Authority as referred to in Annex A of Schedule 2 ( Services);
<b>"Sites"</b>	190 means any premises (including the Authority Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Services are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Services;</li> </ul>
<b>"Specific Change in Law"</b>	191 means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>"Staffing Information"</b>	192 has the meaning give to it in Schedule 11 (Staff Transfer);
<b>"Standards"</b>	193 means any: <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or</li> </ul>

		business sector as the Supplier would reasonably and ordinarily be expected to comply with;
		b) any Standards detailed by the Authority in Paragraph 1 of Schedule 7 (Standards) or agreed between the Parties from time to time;
		c) relevant Government codes of practice and guidance applicable from time to time.
<b>"Sub-Contract"</b>	194	means any contract or agreement (or proposed contract or agreement) pursuant to which a third party: <ul style="list-style-type: none"> <li>a) provides the Services (or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Services (or any part of them);</li> </ul>
<b>"Sub-Contractor"</b>	195	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Sub-processor"</b>	196	any third party appointed to process Personal Data on behalf of that Processor related to this Contract;
<b>"Supplier"</b>	197	means the person, firm or company named in the recitals with whom the Authority enters into this Contract;
<b>"Supplier Assets"</b>	198	means all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;
<b>"Supplier Background IPR"</b>	199	means <ul style="list-style-type: none"> <li>a) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</li> <li>b) Intellectual Property Rights created by the Supplier independently of this Contract;</li> </ul>
<b>"Supplier Equipment"</b>	200	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Authority) in the performance of its obligations under this Contract;
<b>"Supplier Non-Performance"</b>	201	has the meaning given to it in Clause 40.1 (Supplier Relief Due to Authority Cause);
<b>"Supplier Personnel"</b>	202	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-

	Contractor engaged in the performance of the Supplier's obligations under this Contract;
<b>"Supplier Profit"</b>	203 means, in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
<b>"Supplier Profit Margin"</b>	204 means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Representative"</b>	205 means the representative appointed by the Supplier and notified to the Authority in accordance with Clause 21;
<b>"Supplier's Confidential Information"</b>	206 means <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract;</li> <li>c) information derived from any of the above.</li> </ul>
<b>"Tender"</b>	207 means the tender submitted by the Supplier to the Authority on 03/12/2018 a copy of which is annexed or referred to in Schedule 19 (Tender);
	208 not used
	209 not used
	210 not used
	211 not used
	212 not used
<b>"Termination Notice"</b>	213 means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>"Third Party IPR"</b>	214 means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services;

<b>"Transferring Authority Employees"</b>	215	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	216	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Supplier Employees"</b>	217	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>"Transparency Reports"</b>	218	means the information relating to the Services and performance of this Framework Agreement which the Supplier is required to provide to the Authority in accordance with the reporting requirements in Schedule 16;
	219	not used
<b>"Undelivered Services"</b>	220	has the meaning given to it in Clause 9.3.1 (Services);
<b>"Undisputed Sums Time Period"</b>	221	has the meaning given to it Clause 43.1.1 (Termination of Authority Cause for Failure to Pay);
<b>"Valid Invoice"</b>	222	means an invoice issued by the Supplier to the Authority that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Schedule 3 (Contract Charges, Payment and Invoicing);
<b>"Variation"</b>	223	has the meaning given to it in Clause 23.1 (Variation Procedure);
<b>"Variation Form"</b>	224	means the form set out in Schedule 13 (Variation Form);
<b>"Variation Procedure"</b>	225	means the procedure set out in Clause 23.1 (Variation Procedure);
<b>"VAT"</b>	226	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
	227	not used
<b>"Worker"</b>	228	means any one of the Supplier Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 – Tax Arrangements of Public Appointees <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> applies in respect of the Services;
<b>"Working Day"</b>	229	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

## **SCHEDULE 2: SERVICES**

### **1. INTRODUCTION**

1.1. This Schedule specifies the:

- 1.1.1 Services to be provided under this Contract, in Annex 1;
- 1.1.2 Goods Not used
- 1.1.3 Any Installation Works to be provided under this Contract in Annex 3.

## ANNEX 1: THE SERVICES

Please see Specification



Schedule 2  
(Specification).docx

## **ANNEX 2: THE GOODS NOT USED**

### **ANNEX 3: INSTALLATION WORKS NOT USED**

## SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING

### 1. DEFINITIONS

2.1. The following terms used in this Schedule 3 shall have the following meaning:

"Indexation"	230	means the adjustment of an amount or sum in accordance with paragraph 11 of this Schedule 3;
"Indexation Adjustment Date"	231	has the meaning given to it in paragraph 11.1.1(a) of this Schedule 3;
"Reimbursable Expenses"	232	means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including: <ul style="list-style-type: none"><li>a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and</li><li>b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li></ul>
"Review Adjustment Date"	233	has the meaning given to it in paragraph 10.1.1 of this Schedule 3;
"CPI"	234	means the <b>Consumer Prices Index</b> as published by the Office of National Statistics ( <a href="http://www.statistics.gov.uk/instantfigures.asp">http://www.statistics.gov.uk/instantfigures.asp</a> ); and
"Supporting Documentation"	235	means sufficient information in writing to enable the Authority to reasonably to assess whether the Contract Charges, Reimbursable Expenses and other sums due from the Authority under this Contract detailed in the information are properly payable.

### 2. GENERAL PROVISIONS

2.1. This Schedule 3 details:

- 2.2.1. the Contract Charges for the Services under this Contract; and
- 2.2.2. the payment terms/profile for the Contract Charges;
- 2.2.3. the invoicing procedure; and
- 2.2.4. the procedure applicable to any adjustments of the Contract Charges.

### 3. CONTRACT CHARGES

- 3.1. The Contract Charges which are applicable to this Contract are set out in Annex 1 of this Schedule 3.
- 3.2. The Supplier acknowledges and agrees that, subject to paragraph 8 of this Schedule 3 (Adjustment of Contract Charges), the Contract Charges cannot be increased during the Contract Period.

### 4. COSTS AND EXPENSES

- 4.1. Except as expressly set out in paragraph 5 of this Schedule 3 (Reimbursable Expenses), the Contract Charges include all costs and expenses relating to the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
  - 4.1.1. any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
  - 4.1.2. any amount for any services provided or costs incurred by the Supplier prior to the Commencement Date.

### 5. REIMBURSEABLE EXPENSES

- 5.1. The Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Contract Charges under this Contract), provided that such Reimbursable Expenses are supported by Supporting Documentation. The Authority shall provide a copy of their current expenses policy to the Supplier upon request.

### 6. PAYMENT TERMS/PAYMENT PROFILE

- 6.1. The payment terms/profile which are applicable to this Contract are set out in Annex 2 of this Schedule 3.

### 7. INVOICING PROCEDURE

- 7.1. The Authority shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Authority in paragraph 7.6 of this Schedule 3 and in accordance with the provisions of this Contract.
- 7.2. The Supplier shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) system (or similar) or in a paper form, as the Authority may specify (but in respect of paper form, subject to paragraph 7.3 below)):
  - 7.2.1. contains:
    - (a) all appropriate references, including the unique order reference number [ ] [**Guidance note: PO number**]; and
    - (b) a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Contract to which the Delivered Services relate, against the applicable due and payable Contract Charges; and
  - 7.2.2. shows separately:

- (c) any Service Credits due to the Authority; and
- (d) the VAT added to the due and payable Contract Charges in accordance with Clause 24.2.1 of this Contract (VAT) and the tax point date relating to the rate of VAT shown; and

7.2.3. it is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.

- 7.3. If the Authority is a Central Government Body, the Authority's right to request paper form invoicing shall be subject to procurement policy note 11/15 (available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437471/PPN\\_e-invoicing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf)), which sets out the policy in respect of unstructured electronic invoices submitted by the Supplier to the Customer (as may be amended from time to time).
- 7.4. The Supplier shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Authority to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Authority.
- 7.5. All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

7.6. The Supplier shall submit invoices via e-mail directly to:

[paul.weldon@cabinetoffice.gov.uk](mailto:paul.weldon@cabinetoffice.gov.uk)

[valeriu.nastase@cabinetoffice.gov.uk](mailto:valeriu.nastase@cabinetoffice.gov.uk)

## **8. ADJUSTMENT OF CONTRACT CHARGES**

8.1. The Contract Charges shall only be varied:

- 8.1.1. due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges in accordance with Clause 23.2 of this Contract (Legislative Change);
- 8.1.2. where all or part of the Contract Charges are reduced as a result of a review of the Contract Charges in accordance with Clause 19 of this Contract (Continuous Improvement);
- 8.1.3. where all or part of the Contract Charges are reduced as a result of a review of Contract Charges in accordance with Clause 26 of this Contract (Benchmarking);
- 8.1.4. where all or part of the Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Schedule 3;
- 8.1.5. where a review and increase of Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of paragraph 10 of this Schedule 3; or
- 8.1.6. where Contract Charges or any component amounts or sums thereof are expressed in this Schedule as "subject to increase by way of Indexation", in accordance with the provisions in paragraph 11 of this Schedule 3.
- 8.1.7. Subject to paragraphs 8.1.1 to 8.1.4 of this Schedule 3, the Contract Charges will remain fixed for the first two (2) Contract Years.

## **9. SUPPLIER PERIODIC ASSESSMENT OF CONTRACT CHARGES**

9.1. Every six (6) Months during the Contract Period, the Supplier shall assess the level of the Contract Charges to consider whether it is able to reduce them.

9.2. Such assessments by the Supplier under paragraph 9 of this Schedule 3 shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Contract Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 12.1.4 of this Schedule 3 below.

#### **10. SUPPLIER REQUEST FOR INCREASE OF THE CONTRACT CHARGES**

10.1. The Supplier may request an increase in all or part of the Contract Charges in accordance with the remaining provisions of this paragraph 10 subject always to:

10.1.1. the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Contract Charges ("**Review Adjustment Date**") which shall be subject to paragraph 10.2 of this Schedule; and

10.1.2. the Approval of the Authority which shall be granted in the Authority's sole discretion.

10.2. The earliest Review Adjustment Date will be the first (1st) Working Day following the anniversary of the Commencement Date after the expiry of the period specified in paragraph 8.2 of this Schedule 3 during which the Contract Charges shall remain fixed (and no review under this paragraph 10 is permitted). Thereafter any subsequent increase to any of the Contract Charges in accordance with this paragraph 10 of this Schedule 3 shall not occur before the anniversary of the previous Review Adjustment Date during the Contract Period.

10.3. To make a request for an increase of some or all of the Contract Charges in accordance with this paragraph 10, the Supplier shall provide the Authority with:

10.3.1. a list of the Contract Charges it wishes to review;

10.3.2. for each of the Contract Charges under review, written evidence of the justification for the requested increase including:

- (a) a breakdown of the profit and cost components that comprise the relevant Contract Charge;
- (b) details of the movement in the different identified cost components of the relevant Contract Charge;
- (c) reasons for the movement in the different identified cost components of the relevant Contract Charge;
- (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
- (e) evidence that the Supplier's profit component of the relevant Contract Charge is no greater than that applying to Contract Charges using the same pricing mechanism as at the Commencement Date.

#### **11. INDEXATION**

11.1. Where the Contract Charges or any component amounts or sums thereof are expressed in this Schedule 3 as "subject to increase by way of Indexation" the following provisions shall apply:

11.1.1. the relevant adjustment shall:

- (a) be applied on the effective date of the increase in the relevant Contract Charges by way of Indexation ("**Indexation Adjustment Date**") which shall be subject to paragraph 11.1.2 of this Schedule 3;

- (b) be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) Months ended on the 31<sup>st</sup> of January immediately preceding the relevant Indexation Adjustment Date;
- (c) where the published CPI figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Authority and the Supplier shall agree otherwise;
- (d) if the CPI is no longer published, the Authority and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Schedule 3.

11.1.2. The earliest Indexation Adjustment Date will be the (1st) Working Day following the expiry of the period specified in paragraph 8.2 of this Schedule 3 during which the Contract Charges shall remain fixed (and no review under this paragraph 11 is permitted). Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Contract Period;

11.1.3. Except as set out in this paragraph 11 of this Schedule 3, neither the Contract Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-Contractors of the performance of their obligations under this Contract.

## **12. IMPLEMENTATION OF ADJUSTED CONTRACT CHARGES**

12.1. Variations in accordance with the provisions of this Schedule 3 to all or part the Contract Charges (as the case may be) shall be made by the Authority to take effect:

12.1.1. in accordance with Clause 23.2 of this Contract (Legislative Change) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.1 of this Schedule 3;

12.1.2. in accordance with Clause 19 of this Contract (Continuous Improvement) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.2 of this Schedule 3;

12.1.3. in accordance with Clause 26 of this Contract (Benchmarking) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.3 of this Schedule 3; or

12.1.4. on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.4 of this Schedule 3 ; or

12.1.5. on the Review Adjustment Date where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.5 of this Schedule 3;

12.1.6. on the Indexation Adjustment Date where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.6 of this Schedule 3;

12.1.7. and the Parties shall amend the Contract Charges shown in Annex 1 to this Schedule 3 to reflect such variations.

## ANNEX 1: CONTRACT CHARGES

[REDACTED]

## **ANNEX 2: PAYMENT TERMS/PROFILE**

- 3. Guidance Note: Following the award of this Contract, the Authority will agree and finalise with the agreed payment terms/payment profile***

## **SCHEDULE 4: IMPLEMENTATION PLAN, AUTHORITY RESPONSIBILITIES AND KEY PERSONNEL**

### **1. INTRODUCTION**

1.1. This Schedule 4 specifies:

- 1.1.1. in Part A, the Implementation Plan in accordance with which the Supplier shall provide the Services;
- 1.1.2. in Part B, the Authority Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan; and
- 1.1.3. in Part C, The Key Personnel and their Key Roles assigned by the Supplier to this Contract in accordance with Clause 27.1 of this Contract (Key Personnel).

## **2. GENERAL**

### **2.1 The Implementation Plan**

*Guidance Note: Following the award of this Contract, the Authority will agree and finalise with the Supplier the Implementation Plan*

## **PART B: AUTHORITY RESPONSIBILITIES**

### **3. GENERAL**

1.2. The Authority Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Authority Responsibilities in the Implementation Plan.

**PART C: KEY PERSONNEL**

**4. GENERAL**

1.3. The Supplier has assigned the following Key Personnel to this Contract in the Key Roles detailed below:

<b>4. Supplier authorised representative</b>	<b>Response</b>
Name	[REDACTED]
Title	[REDACTED]
Email	[REDACTED]
Phone	[REDACTED]

<b>Supplier compliance officer</b>	<b>Response</b>
Name	[REDACTED]
Title	[REDACTED]
Email	[REDACTED]
Phone	[REDACTED]

<b>Supplier data protection officer</b>	<b>Response</b>
Name	[REDACTED]
Title	[REDACTED]
Email	[REDACTED]
Phone	[REDACTED]

<b>Marketing contact</b>	<b>Response</b>
Name	[REDACTED]
Title	[REDACTED]
Email	[REDACTED]
Phone	[REDACTED]

## **SCHEDULE 5: TESTING**

### **1. INTRODUCTION**

- 1.1 This Schedule 5 (Testing) sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans.

### **2. TESTING OVERVIEW**

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

### **3. TEST STRATEGY**

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

### **4. TEST PLANS**

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

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

**5. TESTING**

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

**6. TEST ISSUES**

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

**7. TEST QUALITY AUDIT**

- 7.1 Without prejudice to its rights pursuant to Clause 22 (Records, Audit Access and Open Book Data), the Authority or an agent or contractor appointed by the Authority may perform on-going quality audits in respect of any part of the Testing.
- 7.2 If the Authority has any concerns following an audit in accordance with paragraph 7.1 above the Authority will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

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

**8. OUTCOME OF TESTING**

8.1 The Authority will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.

8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or

8.2.2 the Parties shall treat the failure as a Supplier Default.

**ANNEX 1: SATISFACTION CERTIFICATE**

To: [REDACTED]

From: [REDACTED]

[insert Date dd/mm/yyyy]

Dear Sirs,

**SATISFACTION CERTIFICATE**

Milestone(s):

***[Guidance Note to Authority: Insert description of the relevant Milestones]***

We refer to the agreement ("**Contract**") relating to the provision of the [Services and/or] [Services] between the [*insert Authority name*] ("**Authority**") and [*insert Supplier name*] ("**Supplier**") dated [*insert Commencement Date dd/mm/yyyy*].

The definitions for terms capitalised in this certificate are set out in this Contract.

[We confirm that all the] [Deliverables relating to Milestone(s)/Milestone(s) [*insert relevant description and/or reference number(s) from the Implementation Plan*]] have been tested successfully in accordance with the Testing Strategy Plan relevant to those Milestone(s)]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Authority]

## **SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING**

### **1. SCOPE**

1.1. This Schedule 6 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.

1.2. This Schedule 6 comprises:

- 1.2.1. Part A: Service Levels and Service Credits;
- 1.2.2. Annex 1 to Part A - Service Levels and Service Credits Table;
- 1.2.3. Annex 2 to Part A – Critical Service Level Failure;
- 1.2.4. Part B: Performance Monitoring; and
- 1.2.5. Annex 1 to Part B: Additional Performance Monitoring Requirements.

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

### **2. GENERAL PROVISIONS**

- 2.1. The Supplier shall provide a proactive Contract manager to ensure that all Service Levels in this Contract are achieved to the highest standard throughout the Contract Period.
- 2.2. The Supplier shall provide a managed service through the provision of a dedicated Contract manager where required on matters relating to:
- 2.2.1. Supply performance;
  - 2.2.2. Quality of [Services and/or] Services;
  - 2.2.3. Authority support;
  - 2.2.4. Complaints handling; and
  - 2.2.5. Accurate and timely invoices.
- 2.3. The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Schedule 6 will result in Service Credits being due to the Authority.

### **3. PRINCIPAL POINTS**

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

### **4. SERVICE LEVELS**

- 4.1. Annex 1 to this Part A of this Schedule 6 sets out the Service Levels the performance of which the Parties have agreed to measure. The Authority reserves the right to amend Service Levels and agree with the Supplier prior to the Commencement Date.
- 4.2. The Supplier shall monitor its performance of this Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Schedule 6 (the "**Service Level Performance Criteria**") and shall send the Authority a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule 6.
- 4.3. The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 4.4. If the level of performance of the Supplier of any element of the provision by it of the Services during the Contract Period:

- 4.1.1. is likely to or fails to meet any Service Level Performance Measure or
  - 4.1.2. is likely to cause or causes a Critical Service Failure to occur,
  - 4.1.3. the Supplier shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 14 of this Contract (Service Levels and Service Credits), may:
    - (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
    - (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Authority shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
    - (c) if a Service Level Failure has occurred, deduct from the Contract Charges the applicable Service Level Credits payable by the Supplier to the Authority in accordance with the calculation formula set out in Annex 1 of this Part A of this Schedule 6; or
    - (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 15 of this Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 15.1.2 of this Contract in relation to Material Breach).
- 4.5. Approval and implementation by the Authority of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Authority.

## 5. SERVICE CREDITS

- 5.1. Annex 1 to this Part A of this Schedule 6 sets out the formula used to calculate a Service Credit payable to the Authority as a result of a Service Level Failure in a given service period which, for the purpose of this Schedule 6, shall be a recurrent period of **one Month** during the Contract Period (the "**Service Period**"). The Authority reserves the right to amend Service Credits and agree with the Supplier prior to the Commencement Date.
- 5.2. Annex 1 to this Part A of this Schedule 6 includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier
- 5.3. The Authority shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Schedule 6 to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 5.4. Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Schedule 6.

## 6. NATURE OF SERVICE CREDITS

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

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

**Guidance Note: Following the award of this Contract, the Authority will agree and finalise with the Supplier the Service levels**

Service Levels				Service Credit for each Service Period  1 service credit = 500 tests (full costs for a completed test)
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
<p><b>Billing &amp; MI</b></p> <p>Accurate and timely billing of Authority</p>	Correct billing information (with supporting data) issued to agreed timelines.	at least 99%	Less than 99%	1 Service Credit gained for each percentage under the specified Service Level Performance Measure
<p><b>Helpdesk and support availability</b></p> <p>Support service will be available:</p> <ul style="list-style-type: none"> <li>· 09:00 to 17:00 GMT/BST</li> <li>· Monday to Friday</li> <li>· Excludes UK Public Holidays.</li> </ul>	Availability of support service	at least 98%	Less than 98%	

<p><b>CSHR contacts helpdesk and support</b></p> <p>Support service will review and respond to Authority support requests.</p>	<p>Time to review and respond.</p>	<p>≥95% receive an initial review and triage response within ≤ 2 Hours</p>	<p>Less than 95%</p>	<p>2 Service Credit gained for each percentage under the specified Service Level Performance Measure</p>
<p><b>System availability</b></p> <p>The service should not experience unscheduled disruption/downtime. This will be measured and reported on a calendar monthly basis.</p>	<p>Service availability</p>	<p>The system will be available, 24/7, for ≥99% of the time.</p>	<p>Less than 99%</p>	<p>2 Service Credits gained for each percentage under the specified Service Level Performance Measure</p>
<p><b>Completed test data transfer</b></p> <p>When a candidate has completed a test their data (marks, scores and reports) is transferred to the applicant tracking system (ATS).</p>	<p>Data transfer performance</p>	<p>Test taker's data is transferred to CS Jobs within 7 minutes of test completion, 95% of test takers.</p>	<p>Less than 95%</p>	<p>1 Service Credit gained for each percentage under the specified Service Level Performance Measure</p>
<p><b>Response time</b></p> <p>When a user requests a html page it displays without significant delay</p>	<p>Page load performance</p>	<p>≤ 5 second average response measured over any calendar month</p>	<p>Less than 80% of the time.</p>	<p>2 Service Credit gained for each percentage under the specified Service Level Performance Measure</p>

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

[Example:

Formula:  $x\%$  (Service Level Performance Measure) -  $x\%$  (actual Service Level performance) =  $x\%$  of the Contract Charges payable to the Authority as Service Credits to be deducted from the next Valid Invoice payable by the Authority

Worked example: 98% (e.g. Service Level Performance Measure requirement for Service Level Performance Criterion of accurate and timely billing to Authority) - 75% (e.g. actual performance achieved against this Service Level Performance Criterion in a Service Period) = 23% of the Contract Charges payable to the Authority as Service Credits to be deducted from the next Valid Invoice payable by the Authority]

**ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE**

***Guidance Note: Following the award of this Contract, the Authority will agree and finalise with the Supplier the Service levels***

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

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

[other ]

[The number of Service Level Performance Criteria for the purposes of Clause 14.6.1 shall be [ ]]

## **PART B: PERFORMANCE MONITORING**

### **7. PRINCIPAL POINTS**

6.2. Part B to this Schedule 6 provides the methodology for monitoring the provision of the Services:

- 2.1.1. to ensure that the Supplier is complying with the Service Levels; and
- 2.2.1. for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").

6.3. Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

### **8. REPORTING OF SERVICE FAILURES**

6.4. The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Authority in accordance with the processes agreed in paragraph 1.2 of Part B of this Schedule 6 above.

### **9. PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

6.5. The Supplier shall provide the Authority with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Schedule 6 above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

- 2.1.1. for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
- 2.2.1. a summary of all failures to achieve Service Levels that occurred during that Service Period;
- 2.3.1. any Critical Service Level Failures and details in relation thereto;
- 2.4.1. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 2.5.1. the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
- 2.6.1. such other details as the Authority may reasonably require from time to time.

6.6. The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 2.7.1. take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
- 2.8.1. take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;
- 2.9.1. be attended by the Supplier's Representative and the Authority's Representative; and

2.10.1. be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Authority's Representative at each meeting.

6.7. The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

6.8. The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

## **10. SATISFACTION SURVEYS**

6.9. In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Services.

6.10. The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

6.11. All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 19 of this Contract (Continuous Improvement).

**ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS NOT USED**

## SCHEDULE 7: STANDARDS

### 1. STANDARDS

1.1. Technology Code of Practice -

<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>

1.2. Digital Service Standard - <https://www.gov.uk/service-manual/service-standard>

## SCHEDULE 8: SECURITY

### 1. DEFINITIONS

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

<b>"Breach of Security"</b>	236	means the occurrence of: a) any unauthorised access to or use of the Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Contract; and/or b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract, 237 in either case as more particularly set out in the security requirements in the Security Policy;
<b>"ISMS"</b>	238	the information security management system and process developed by the Supplier in accordance with paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule 8; and
<b>"Security Tests"</b>	239	tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

### 2. INTRODUCTION

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

6.3. The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:

2.1.1. [REDACTED]

2.2.1. [REDACTED]

6.4. If the persons named in paragraphs 2.2.1 and 2.2.2 are included as Key Personnel, Clause 27 (Key Personnel) shall apply in relation to such persons.

6.5. The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

6.6. Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

6.7. The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.

6.8. The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.

6.9. The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

### 3. ISMS

6.10. The Supplier shall develop and submit to the Authority for the Authority's Approval, within twenty (20) working days after the Commencement Date or such other date as agreed between the Parties, an information security management system for the purposes of this Contract, which shall comply with the requirements of paragraphs 3.3 to 3.5 of this Schedule 8 (Security).

6.11. The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.

6.12. The ISMS shall:

- 2.1.1. unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Authority Premises, the Sites, any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract;
- 2.2.1. meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph7;
- 2.3.1. at all times provide a level of security which:
  - (a) is in accordance with the Law and this Contract;
  - (b) as a minimum demonstrates Good Industry Practice;
  - (c) complies with the Security Policy;
  - (d) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/255910/HMG\\_Security\\_Policy\\_Framework\\_V11.0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf) ;
  - (e) takes account of guidance issued by the Centre for Protection of National Infrastructure on Risk Management [http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk\\_management.pdf](http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk_management.pdf);
  - (f) complies with HMG Information Assurance Maturity Model and Assurance Framework <http://www.cesg.gov.uk/publications/Documents/iamm-assessment-framework.pdf>;
  - (g) meets any specific security threats of immediate relevance to the Services and/or Authority Data; and
  - (h) complies with the Authority's ICT policies;
- 2.4.1. document the security incident management processes and incident response plans;

- 2.5.1. document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware; and
- 2.6.1. be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).
- 6.13. Subject to Clause 35 of this Contract (Security and Protection of Information) the references to Standards, guidance and policies contained or set out in paragraph 3.3 of this Schedule 8 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 6.14. In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Schedule 8, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 6.15. If the ISMS submitted to the Authority pursuant to paragraph 3.1 of this Schedule 8 is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule 8. If the ISMS is not Approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Authority. If the Authority does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to this paragraph 3 of this Schedule 8 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 of this Schedule 8 shall be deemed to be reasonable.
- 6.16. Approval by the Authority of the ISMS pursuant to paragraph 3.6 of this Schedule 8 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule 8.

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

- 6.17. Within twenty (20) Working Days after the Commencement Date, the Supplier shall prepare and submit to the Authority for Approval in accordance with paragraph 4 of this Schedule 8 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Schedule 8.
- 6.18. The Security Management Plan shall:
  - 2.1.1. be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
  - 2.2.1. comply with the Security Policy;
  - 2.3.1. identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule 8 is complied with by the Supplier;

- 2.4.1. detail the process for managing any security risks from SubContractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
  - 2.5.1. unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
  - 2.6.1. set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule 8 (including the requirements set out in paragraph 3.3 of this Schedule 8);
  - 2.7.1. set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties.
  - 2.8.1. be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
  - 2.9.1. be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule .
- 6.19. If the Security Management Plan submitted to the Authority pursuant to paragraph 3.1 of this Schedule is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Authority of the Security Management Plan. If the Authority does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Schedule shall be deemed to be reasonable.
- 6.20. Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3 of this Schedule 8 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule 8.

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

- 6.21. The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:
- 2.1.1. emerging changes in Good Industry Practice;
  - 2.2.1. any change or proposed change to Services and/or associated processes;
  - 2.3.1. any changes to the Security Policy;
  - 2.4.1. any new perceived or changed security threats; and
  - 2.5.1. any reasonable change in requirement requested by the Authority.
- 6.22. The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
- 2.6.1. suggested improvements to the effectiveness of the ISMS;
  - 2.7.1. updates to the risk assessments;
  - 2.8.1. proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
  - 2.9.1. suggested improvements in measuring the effectiveness of controls.
- 6.23. Subject to paragraph 5.4 of this Schedule, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Schedule, a Authority request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Authority.
- 6.24. The Authority may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

## **6. SECURITY TESTING**

- 6.25. The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.26. The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

- 6.27. Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority's test adversely affects the Supplier's ability to deliver the Good and/or Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority's test.
- 6.28. Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Schedule 8 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Schedule 8) or the requirements of this Schedule 8, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.
- 6.29. If any repeat Security Test carried out pursuant to paragraph 6.4 of this Schedule 8 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

## **7. ISMS COMPLIANCE**

- 6.30. The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy.
- 6.31. If, on the basis of evidence provided by such security audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or the Security Policy are not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 6.32. If, as a result of any such independent audit as described in paragraph 7.2 of this Schedule 8 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **8. BREACH OF SECURITY**

- 6.33. Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.

- 6.34. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Schedule, the Supplier shall:
- 2.1.1. immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
  - (b) remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Authority Property and/or Authority Assets and/or ISMS to the extent that this is within its control;
  - (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Services so as to meet the relevant Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
  - (d) prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure;
  - (e) supply any requested data to the Authority (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Authority's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
  - (f) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security, including a root cause analysis where required by the Authority.
- 6.35. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy or the requirements of this Schedule 8, then any required change to the ISMS shall be at no cost to the Authority.

## **ANNEX 1: SECURITY POLICY**

**Guidance Note: Following the award of this Contract, the Authority will populate with the Suppliers Security Policy**

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

**Guidance Note: Following the award of this Contract, the Authority will populate with the Suppliers Security Management Plan**

## SCHEDULE 9: BUSINESS CONTINUITY AND DISASTER RECOVERY

### 9. DEFINITIONS

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

"Business Continuity Plan"	240	has the meaning given to it in paragraph 2.2.1(b) of this Schedule 9;
"Business Continuity Services"	241	has the meaning given to it in paragraph 4.2.2 of this Schedule 9;
"Disaster"	242	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of 48 hours or which is reasonably anticipated will mean that the provision of the Services or a material part thereof will be unavailable for that period;
	243	not used
"Disaster Recovery Plan"	244	has the meaning given to it in 2.2.1(c) of this Schedule 9;
"Disaster Recovery Services"	245	the services embodied in the processes and procedures for restoring the Services following the occurrence of a disaster;
"Disaster Recovery System"	246	the system identified by the Supplier in the Tender which shall be used for the purpose of delivering the Disaster Recovery Services;
"Review Report"	247	has the meaning given to it in paragraph 6.2 of this Schedule 9;
"Supplier's Proposals"	248	has the meaning given to it in paragraph 6.2.3 of this Schedule 9;

### 10. BCDR PLAN

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

2.1.1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.2.1. the recovery of the Services in the event of a Disaster.

6.38. The BCDR Plan shall:

2.3.1. be divided into three parts:

- (a) Part A which shall set out general principles applicable to the BCDR Plan;
- (b) Part B which shall relate to business continuity (the "**Business Continuity Plan**"); and
- (c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and

2.4.1. unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

6.39. Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:

2.5.1. review and comment on the draft BCDR Plan as soon as reasonably practicable; and

2.6.1. notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.

6.40. If the Authority rejects the draft BCDR Plan:

2.7.1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and

2.8.1. the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Schedule 9 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

## **11. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS**

6.41. Part A of the BCDR Plan shall:

2.1.1. set out how the business continuity and disaster recovery elements of the Plan link to each other;

2.2.1. provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any Services provided to the Authority by a Related Supplier;

2.3.1. contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;

2.4.1. detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Supplier in each case as notified to the Supplier by the Authority from time to time;

2.5.1. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;

2.6.1. contain a risk analysis, including:

(a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;

(b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;

(c) identification of risks arising from the interaction of the provision of Services and with the Services provided by a Related Supplier; and

(d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

2.7.1. provide for documentation of processes, including business processes, and procedures;

- 2.8.1. set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Authority;
  - 2.9.1. identify the procedures for reverting to “normal service”;
  - 2.10.1. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
  - 2.11.1. identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 2.12.1. provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.
- 6.42. The BCDR Plan shall be designed so as to ensure that:
- 2.13.1. The Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 2.14.1. the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
  - 2.15.1. it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
  - 2.16.1. there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 6.43. The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.
- 6.44. The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

## **12. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS**

- 6.45. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
- 2.1.1. the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
  - 2.2.1. the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 6.46. The Business Continuity Plan shall:
- 2.3.1. address the various possible levels of failures of or disruptions to the provision of Services;
  - 2.4.1. set out the Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such Services, services and steps, the “**Business Continuity Services**”);

- 2.5.1. specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
- 2.6.1. clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

### **13. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS**

- 6.47. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 6.48. The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 6.49. The Disaster Recovery Plan shall include the following:
  - 2.1.1. the technical design and build specification of the Disaster Recovery System;
  - 2.2.1. details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - 2.3.1. Authority to complete with the procedures and processes necessary for the particular procurement;
    - 2.4.1. any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
    - 2.5.1. details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
    - 2.6.1. access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule 9; and
    - 2.7.1. testing and management arrangements.

### **14. REVIEW AND AMENDMENT OF THE BCDR PLAN**

- 6.50. The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
  - 2.1.1. on a regular basis and as a minimum once every six (6) months;
  - 2.2.1. within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
  - 2.3.1. where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule 9) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

6.51. Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule 9 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a **“Review Report”**) setting out:

2.4.1. the findings of the review;

2.5.1. any changes in the risk profile associated with the provision of Services; and

2.6.1. the Supplier's proposals (the **“Supplier's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any Services, services or systems provided by a third party.

6.52. Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

2.7.1. review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

2.8.1. notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.

6.53. If the Authority rejects the Review Report and/or the Supplier's Proposals:

2.9.1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and

2.10.1. the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Schedule 9 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.54. The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

## **15. TESTING OF THE BCDR PLAN**

6.55. The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Schedule 9, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at

any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

- 6.56. If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 6.57. The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 6.58. The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 6.59. The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
  - 2.1.1. the outcome of the test;
  - 2.2.1. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 2.3.1. the Supplier's proposals for remedying any such failures.
- 6.60. Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 6.61. For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 6.62. The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **16. INVOCATION OF THE BCDR PLAN**

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

## SCHEDULE 10: EXIT MANAGEMENT

### 17. DEFINITIONS

6.64. In this Schedule 10, the following definitions shall apply:

<b>"Exclusive Assets"</b>	249 means those Supplier Assets used by the Supplier or a Key Sub-Contractor / Sub-Contractor which are used exclusively in the provision of the Services;
<b>"Exit Information"</b>	250 has the meaning given to it in paragraph 4.1 of this Schedule 10;
<b>"Exit Manager"</b>	251 means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule 10 for managing the Parties' respective obligations under this Schedule 10;
<b>"Net Book Value"</b>	252 means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Costumer of even date with this Contract;
<b>"Non-Exclusive Assets"</b>	253 means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor / Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor / Sub-Contractor for other purposes;
<b>"Registers"</b>	254 means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Schedule 10;
<b>"Termination Assistance"</b>	255 means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	256 has the meaning given to it in paragraph 6.1 of this Schedule 10;
<b>"Termination Assistance Period"</b>	257 means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule 10;
<b>"Transferable Assets"</b>	258 means those of the Exclusive Assets which are capable of legal transfer to the Authority;

**"Transferable Contracts"**

259 means the Sub-Contracts, licences for Supplier's Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Authority or any Replacement Supplier to provide the Services or the Replacement Services and/or Replacement Services, including in relation to licences all relevant Documentation;

**"Transferring Assets"**

260 has the meaning given to it in paragraph 9.2.1 of this Schedule 10;

**"Transferring Contracts"**

261 has the meaning given to it in paragraph 9.2.3 of this Schedule 10.

**18. INTRODUCTION**

- 6.65. This Schedule 10 describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Authority leading up to and covering the Expiry Date and the transfer of service provision to the Authority and/or a Replacement Supplier.
- 6.66. The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Authority and/or a Replacement Supplier at the Expiry Date.

**19. OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT**

6.67. During the Contract Period, the Supplier shall:

2.1.1. create and maintain a Register of all:

(a) Supplier Assets, detailing their:

- (i) make, model and asset number;
- (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (iii) Net Book Value;
- (iv) condition and physical location; and
- (v) use (including technical specifications); and

(b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

2.2.1. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

2.3.1. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

2.4.1. at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

- 6.68. The Supplier shall:
- 2.5.1. procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract; and
  - 2.6.1. (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party IPR supplied by third parties and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.
- 6.69. Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Schedule 10 which the Supplier proposes to enter into after the Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of Services to which the relevant agreement relates.
- 6.70. Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule 10 and provide written notification of such appointment to the other Party within three (3) months of the Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule 10. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule 10. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule 10 and each Party's compliance with it.

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

- 6.71. On reasonable notice at any point during the Contract Period, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 2.1.1. details of the Service(s);
  - 2.2.1. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - 2.3.1. an inventory of Authority Data in the Supplier's possession or control;
  - 2.4.1. details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 2.5.1. a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 2.6.1. all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees' required to be provided by the Supplier under this Contract such information to include the Staffing Information [as defined in Schedule [10] (Staff Transfer)]; and

2.7.1. such other material and information as the Authority shall reasonably require,  
1.3. (together, the “Exit Information”).

6.1. The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Schedule 10 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).

6.2. The Supplier shall:

2.8.1. notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and

2.9.1. provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

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

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

2.10.1. prepare an informed offer for those Services; and

2.11.1. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

## **21. EXIT PLAN**

6.5. The Supplier shall, within three (3) months after the Commencement Date, deliver to the Authority an Exit Plan which:

2.1.1. sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Contract;

2.2.1. complies with the requirements set out in paragraph 5.3 of this Schedule 10;

2.3.1. is otherwise reasonably satisfactory to the Authority.

6.6. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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

2.4.1. how the Exit Information is obtained;

2.5.1. the management structure to be employed during both transfer and cessation of the Services;

2.6.1. the management structure to be employed during the Termination Assistance Period;

- 2.7.1. a detailed description of both the transfer and cessation processes, including a timetable;
- 2.8.1. how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
- 2.9.1. details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
- 2.10.1. proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
- 2.11.1. proposals for providing the Authority or a Replacement Supplier copies of all documentation:
  - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
  - (b) relating to the use and operation of the Services;
- 2.12.1. proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 2.13.1. proposals for the identification and return of all Authority Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 2.14.1. proposals for the disposal of any redundant Services and materials;
- 2.15.1. procedures to:
  - 22. (a) deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 11 (Staff Transfer);
  - 23. (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
  - 24. (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;
- 2.1.1. how each of the issues set out in this Schedule 10 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- 2.2.1. proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

## **25. TERMINATION ASSISTANCE**

- 6.8. The Authority shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination**

**Assistance Notice"**) at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- 2.1.1. the date from which Termination Assistance is required;
- 2.2.1. the nature of the Termination Assistance required; and
- 2.3.1. the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.

6.9. The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

## **26. TERMINATION ASSISTANCE PERIOD**

6.10. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- 2.1.1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;
- 2.2.1. in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- 2.3.1. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority;
- 2.4.1. provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
- 2.5.1. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

6.11. Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Schedule 10, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule 10 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

6.12. If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant

Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

## **27. TERMINATION OBLIGATIONS**

6.13. The Supplier shall comply with all of its obligations contained in the Exit Plan.

6.14. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule 10), the Supplier shall:

- 2.1.1. cease to use the Authority Data;
  - 2.2.1. provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - 2.3.1. erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
  - 2.4.1. return to the Authority such of the following as is in the Supplier's possession or control:
    - (a) all copies of any software licensed by the Authority to the Supplier under this Contract;
    - (b) all materials created by the Supplier under this Contract in which the IPRs are owned by the Authority;
    - (c) any parts of the equipment which belongs to the Authority;
    - (d) any items that have been on-charged to the Authority, such as consumables; and
    - (e) all Authority Property issued to the Supplier under Clause 32 of this Contract (Authority Property). Such Authority Property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
    - (f) any sums prepaid by the Authority in respect of Services not Delivered by the Expiry Date;
  - 2.5.1. vacate any Authority Premises;
  - 2.6.1. remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
  - 2.7.1. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
    - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
    - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
- 6.15. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of

the Services and the Termination Assistance and its compliance with the other provisions of this Schedule 10), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or termination services or for statutory compliance purposes.

6.16. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## 28. ASSETS AND SUB-CONTRACTS

6.17. Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:

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

6.18. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Schedule 10, the Authority shall provide written notice to the Supplier setting out:

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

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

2.6.1. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

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

6.1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Contract Charges at the expiry Date, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Contract Charges.

6.2. Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring

Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.

6.3. Where the Supplier is notified in accordance with paragraph 9.2.2 of this Schedule that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

2.7.1. procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

2.8.1. procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

6.4. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

6.5. The Authority shall:

2.9.1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

2.10.1. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

6.6. The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

6.7. The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Schedule 10 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

## **29. SUPPLIER PERSONNEL**

6.8. The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 11 (Staff Transfer) shall apply.

6.9. The Supplier shall not and shall procure that any relevant Sub-Contractor shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) without the prior written consent of the Authority to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier and/or Replacement Sub-Contractor.

6.10. During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-Contractor shall:

- 2.1.1. give the Authority and/or the Replacement Supplier and/or Replacement Sub-Contractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Authority, Replacement Supplier and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Supplier Employees;
- 2.2.1. co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services.

1.5.

- 6.1. The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 6.2. The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier except that this paragraph 10.5 shall not apply where an offer is made pursuant to an express right to make such offer under Schedule 11.1 (Staff Transfer) in respect of a Transferring Supplier Employee not identified in the Supplier's Final Supplier Personnel List,.

### **30. CHARGES**

- 6.3. Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule 10 including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

### **31. APPORTIONMENTS**

- 6.4. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
  - 2.1.1. the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 2.2.1. the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - 2.3.1. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 6.5. Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Schedule 10 as soon as reasonably practicable.

**SCHEDULE 11: STAFF TRANSFER NOT USED**

## SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE

### 32. DEFINITIONS

6.6. In this Schedule 12, the following definitions shall apply:

<b>“CEDR”</b>	262	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Counter Notice”</b>	263	has the meaning given to it in paragraph 6.2 of this Schedule 12;
<b>“Exception”</b>	264	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Contract or in the supply of the Services;
<b>“Expert”</b>	265	the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule 12;
<b>“Extraordinary Meeting”</b>	266	a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this Schedule 12;
<b>“Mediator”</b>	267	the independent third party appointed in accordance with paragraph 4.2 of this Schedule 12; and
<b>“Senior Officers”</b>	268	are senior officials of the Authority and Supplier that have been instructed by the Authority Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation.

### 33. INTRODUCTION

6.7. The Parties shall seek to resolve a Dispute:

- 2.1.1. first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this Schedule 12);
- 2.2.1. where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this Schedule 12);
- 2.3.1. where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this Schedule 12); and
- 2.4.1. if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this Schedule 12) or litigation (in accordance with Clause 58 of this Contract (Governing Law and Jurisdiction)).

6.8. Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Schedule 12) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Schedule 12.

6.9. Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this Schedule 12.

## 1.6. Good faith discussions

- 6.1. Pursuant to paragraph 2.1.1 of this Schedule 12, if any Dispute arises the Authority Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.
- 6.2. Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.
- 6.3. The Authority Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.
- 6.4. The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.
- 6.5. If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.
- 6.6. If:
  - 2.5.1. the Extraordinary Meetings are unsuccessful in resolving the Dispute; or
  - 2.6.1. the Parties agree that good faith discussions shall not resolve the Dispute; or
  - 2.7.1. the Dispute has not been resolved through good faith discussions thirty (30) Working Days from when they first started,
34. the Parties shall attempt to resolve the Dispute by commercial negotiation.

## **35. COMMERCIAL NEGOTIATIONS**

- 6.7. Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this Schedule 12, pursuant to paragraph 2.1.2 the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers.
- 6.8. Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.
- 6.9. If Senior Officers:
  - 2.1.1. are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
  - 2.2.1. fail to resolve the Dispute in the timelines under paragraph 3.2 of this Schedule 12,
    - 1.7. commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this Schedule 12.

## 1.8. Dispute Notice

- 6.1. The Dispute Notice shall set out:
  - 2.3.1. the material particulars of the Dispute;
  - 2.4.1. the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.5.1. if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 7 of this Schedule 12, the reason why.

6.2. Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

### **36. MEDIATION**

6.3. Pursuant to paragraph 2.1.3 of this Schedule 12, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation and where mediation is not agreed, the Parties may proceed to arbitration or litigation in accordance with this Schedule 12.

6.4. Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.

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

6.6. If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this Schedule 12, either Party may proceed to:

2.1.1. hold further discussions between Senior Officers; or

2.2.1. an Expert determination, as prescribed in paragraph 5 of this Schedule 12; or

2.3.1. arbitration, as prescribed in paragraph 6 of this Schedule 12; or

2.4.1. litigation in accordance with Clause 58 of this Contract (Governing Law and Jurisdiction).

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

6.8. Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6.9. The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this Schedule 12 shall be shared equally between the Parties.

### **37. EXPERT DETERMINATION**

6.10. If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.

6.11. Where the Parties agree to an expert determination, the Expert shall:

- 2.1.1. be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body; and
- 2.2.1. act on the following basis:
  - (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
  - (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
  - (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
  - (e) the process shall be conducted in private and shall be confidential; and
  - (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

### 38. ARBITRATION

- 6.12. Either of the Parties may at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation , mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule 12. The Parties are not obliged to pursue arbitration may may choose to do so in resolving the Dispute.
- 6.13. Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Schedule 12 or be subject to the jurisdiction of the courts in accordance with Clause 58 of this Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.14. If:
  - 2.1.1. the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule 12 shall apply;
  - 2.2.1. the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
  - 2.3.1. the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule 12, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule 12 or commence court proceedings in the courts in accordance with Clause 58 of this Contract

(Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.15. In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule 12, the Parties hereby confirm that:

- 2.4.1. all disputes, issues or claims arising out of or in connection with this Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“LCIA”) (subject to paragraphs 6.4.5 and 6.4.6 of this Schedule 12);
- 2.5.1. the arbitration shall be administered by the LCIA;
- 2.6.1. 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 Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 2.7.1. if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 2.8.1. the arbitration proceedings shall take place in London and in the English language;
- 2.9.1. the seat of the arbitration shall be London; and

### **39. EXPEDITED DISPUTE TIMETABLE**

39.1 In exceptional circumstances where the use of the times in this Schedule 12 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

39.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this Schedule 12 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Schedule 12:

- 2.1.1. in paragraph 2.8, fourteen (14) Working Days;
- 2.2.1. in paragraph 3.2, ten (10) Working Days;
- 2.3.1. in paragraph 4.2, ten (10) Working Days;
- 2.4.1. in paragraph 5.2, five (5) Working Days; and
- 2.5.1. in paragraph 6.2, ten (10) Working Days.

6.16. If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this Schedule 12 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.

6.17. If, pursuant to paragraph 7.2 of this Schedule 12, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this Schedule 12).

6.18. Any agreed extension under paragraph 7.2 of this Schedule 12 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

#### **40. URGENT RELIEF**

6.19. Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- 2.1.1. for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; or
- 2.2.1. where compliance with paragraph 2.1 of this Schedule 12 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period; or
- 2.3.1. if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where it is agreed between the Parties) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

41.

**SCHEDULE 13: VARIATION FORM**

No of order being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Authority] ("**the Authority**")

and

[REDACTED] ("**the Supplier**")

1. This Contract is varied as follows:

***[Guidance Note: Refer to Clause 23.1 and insert details of the Variation]***

2. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the Authority.
3. Words and expressions in this Variation shall have the meanings given to them in this Contract.
4. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature [REDACTED]

Date [REDACTED]

Name (in Capitals) [REDACTED]

Address [REDACTED]

.....

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature [REDACTED]

Date [REDACTED]

Name (in Capitals) [REDACTED]

Address [REDACTED]

.....

**SCHEDULE 14: COMMERCIALY SENSITIVE INFORMATION**

**42. INTRODUCTION**

- 6.20. In this Schedule 14 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 6.21. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 14 applies.
- 6.22. Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 35.4 (Transparency and Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

<b>No.</b>	<b>Date</b>	<b>Item(s)</b>	<b>Duration of Confidentiality</b>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

## **SCHEDULE 15: INSURANCE REQUIREMENTS**

### **43. OBLIGATION TO MAINTAIN INSURANCES**

- 6.23. Without prejudice to its obligations to the Authority under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 15 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of the Insurances is effective no later than the Commencement Date.
- 6.24. The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 6.25. The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 6.26. The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

### **44. GENERAL OBLIGATIONS**

- 6.27. Without limiting the other provisions of this Contract, the Supplier shall:
- 2.1.1. take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.2.1. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.3.1. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **45. FAILURE TO INSURE**

- 6.28. The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 6.29. Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **46. EVIDENCE OF POLICIES**

6.30. The Supplier shall upon the Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule 15. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Contract.

#### **47. AGGREGATE LIMIT OF INDEMNITY**

6.31. Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

- 2.1.1. if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:
  - (a) details of the policy concerned; and
  - (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
- 2.2.1. if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Supplier shall:
  - (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
  - (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

#### **48. CANCELLATION**

6.32. The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

#### **49. INSURANCE CLAIMS**

6.33. The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

6.34. Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of [REDACTED] relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

- 6.35. Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.36. Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE**

#### **50. INSURED**

6.37. The Supplier

#### **51. INTEREST**

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

2.1.1. death or bodily injury to or sickness, illness or disease contracted by any person;

2.2.1. loss of or damage to property;

1.9. happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 15) and arising out of or in connection with the provision of the Services and in connection with this Contract.

#### **52. LIMIT OF INDEMNITY**

6.1. Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited, but [REDACTED] any one occurrence and in the aggregate per annum in respect of products and pollution liability.

#### **53. TERRITORIAL LIMITS**

6.2. United Kingdom and European Union

#### **54. PERIOD OF INSURANCE**

6.3. From the Commencement Date for the Contract Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

#### **55. COVER FEATURES AND EXTENSIONS**

6.4. Indemnity to principals clause.

#### **56. PRINCIPAL EXCLUSIONS**

6.5. War and related perils.

6.6. Nuclear and radioactive risks.

6.7. Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

6.8. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

6.9. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

6.10. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

- 6.11. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 6.12. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**57. MAXIMUM DEDUCTIBLE THRESHOLD**

- 6.13. Not to exceed **£0.00** for each and every third party property damage claim (personal injury claims to be paid in full).

## **PART B: PROFESSIONAL INDEMNITY INSURANCE**

### **58. INSURED**

58.1 The Supplier

### **59. INTEREST**

59.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

### **60. LIMIT OF INDEMNITY**

60.1 Not less than [REDACTED] in respect of any one claim and in the aggregate per annum.

### **61. TERRITORIAL LIMITS**

61.1 United Kingdom

### **62. PERIOD OF INSURANCE**

62.1 From the date of this Contract and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Contract Period or until earlier termination of this Contract and (b) for a period of 6 years thereafter.

### **63. COVER FEATURES AND EXTENSIONS**

63.1 Retroactive cover to apply to any claims made policy wording in respect of this Contract or retroactive date to be no later than the Commencement Date.

### **64. PRINCIPAL EXCLUSIONS**

64.1 War and related perils

64.2 Nuclear and radioactive risks

### **65. MAXIMUM DEDUCTIBLE THRESHOLD**

65.1 Not to exceed £0.00 each and every claim.

## **PART C: UNITED KINGDOM COMPULSORY INSURANCES**

### **66. GENERAL**

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

## SCHEDULE 16: CONDUCT OF CLAIMS

### 67. GENERAL

- 67.1 This Schedule 16 shall apply to the conduct by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 67.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 67.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 67.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- 2.1.1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - 2.2.1. the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - 2.3.1. the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - 2.4.1. the Indemnifier shall conduct the Claim with all due diligence.
- 67.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- 2.1.1. the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
  - 2.2.1. the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
  - 2.3.1. the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

### 68. RECOVERY OF SUMS

- 68.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event

or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

- 2.1.1. an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 2.2.1. the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## **69. MITIGATION**

- 69.1 Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule 16.

**SCHEDULE 17: KEY SUB-CONTRACTORS NOT USED**

[REDACTED]

**SCHEDULE 18: GUARANTEE**

[REDACTED]

## DEED OF GUARANTEE

THIS DEED OF GUARANTEE [REDACTED]

BETWEEN: [REDACTED]

- (1) [REDACTED]
- (2) [REDACTED] (“Beneficiary”)

### WHEREAS:

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

### 70. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

6.1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

6.2. the words and phrases below shall have the following meanings:

**Beneficiary** means the Authority and "Beneficiaries" shall be construed accordingly

**Contract** means the agreement for the Services dated on or about the date hereof made between the Authority and the Supplier

**Services** shall have the meaning given in the Contract

**Guaranteed Agreement** means Contract made between the Beneficiary and the Supplier on [REDACTED]

**Services** has the meaning given in the Contract

**“Guaranteed Obligations”**

**71. MEANS ALL OBLIGATIONS AND LIABILITIES OF THE SUPPLIER TO THE BENEFICIARY UNDER THE GUARANTEED AGREEMENT TOGETHER WITH ALL OBLIGATIONS OWED BY THE SUPPLIER TO THE BENEFICIARY THAT ARE SUPPLEMENTAL TO, INCURRED UNDER, ANCILLARY TO OR CALCULATED BY REFERENCE TO THE GUARANTEED AGREEMENT;**

71.1 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or

agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

- 71.2 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 71.3 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 71.4 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 71.5 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 71.6 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 71.7 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 71.8 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 71.9 references to liability are to include any liability whether actual, contingent, present or future.

## **72. GUARANTEE AND INDEMNITY**

- 72.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 72.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 72.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
  - 2.1.1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
  - 2.2.1. as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which

such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

- 72.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

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

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

### **74. DEMANDS AND NOTICES**

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

2.1.1. [REDACTED]

2.2.1. [REDACTED]

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

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

2.1.1. if delivered by hand, at the time of delivery; or

2.2.1. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

2.3.1. if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

- 74.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or

demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

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

## **75. BENEFICIARY'S PROTECTIONS**

- 75.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 75.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 2.1.1. it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 2.2.1. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 2.3.1. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 2.4.1. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 75.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 75.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such

security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

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

#### **76. GUARANTOR INTENT**

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

#### **77. RIGHTS OF SUBROGATION**

- 77.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
  - 2.1.1. of subrogation and indemnity;
  - 2.2.1. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
  - 2.3.1. to prove in the liquidation or insolvency of the Supplier,
- 77.2 only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

#### **78. DEFERRAL OF RIGHTS**

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

- 2.1.1. exercise any rights it may have to be indemnified by the Supplier;
  - 2.2.1. claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
  - 2.3.1. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
  - 2.4.1. demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
  - 2.5.1. claim any setoff or counterclaim against the Supplier;
- 78.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **79. REPRESENTATIONS AND WARRANTIES**

- 79.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 2.1.1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
  - 2.2.1. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
  - 2.3.1. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
    - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
    - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
    - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
  - 2.4.1. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
  - 2.5.1. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **80. PAYMENTS AND SET-OFF**

- 80.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 80.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 80.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

#### **81. GUARANTOR'S ACKNOWLEDGEMENT**

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

#### **82. ASSIGNMENT**

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

#### **83. SEVERANCE**

- 83.1 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.

#### **84. THIRD PARTY RIGHTS**

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

#### **85. GOVERNING LAW**

- 85.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

- 85.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 85.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 85.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 85.5 The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] either at its registered office or on facsimile number from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

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

EXECUTED as a DEED by

[REDACTED]

Director

Director/Secretary

## **SCHEDULE 19: TENDER**

### **86. GENERAL**

- 86.1 This Schedule 19 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire.
- 86.2 In addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Services to the Authority in accordance with the Tender.

[REDACTED]

## **SCHEDULE 20: TRANSPARENCY REPORTS**

### **87. GENERAL**

- 87.1 Within three (3) months of the Commencement Date or the date so specified by the Authority the Supplier shall provide to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements in Annex 1 of this Schedule 20 below.
- 87.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 87.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 20 below.
- 87.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 87.5 The requirements in this Schedule 20 are in addition to any other reporting requirements in this Framework Agreement.

**ANNEX 1: LIST OF TRANSPARENCY REPORTS**

<b>Title</b>	<b>Content</b>	<b>Format</b>	<b>Frequency</b>
<b>[Performance]</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]</b>
<b>[Charges]</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]</b>
<b>[Key Sub-Contractors]</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]</b>
<b>[Technical]</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]</b>
<b>[Performance management]</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]</b>

**SCHEDULE 21: ALTERNATIVE AND/OR ADDITIONAL CLAUSES**

**NOT USED**

## SCHEDULE 22 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

**Guidance Note: Following the award of this Contract, the Authority will finalise this Schedule.**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 1.1.
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</p>
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]

<p>Categories of Data Subject</p>	<p>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</p>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>[Describe how long the data will be retained for, how it be returned or destroyed]</p>