

# Award Form



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This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	Buyer	The Ministry of Justice (the Buyer).  Its principal office for this Contract is at: 5 Wellington Place, Leeds, LS1 4AP United Kingdom
2.	Supplier	Name: VMI SISTEMAS DE SEGURANÇA LTDA  Address: R. Hum, nº 55 – Quinhão 3, Distrito Industrial Genesco Aparecido de Oliveira, CEP 33.240-094, Lagoa Santa/MG, Brazil  Registration number: 05.293.074/0001-87 SID4GOV ID: N/A
3.	Contract	This Contract between the Buyer and the Supplier is for the supply of Deliverables.  This opportunity is advertised in the Contract Notice in the Find a Tender Notice reference: 2022/S 000-004087 Published: 11 February 2022.
4.	Contract reference	(Prj_7080)  [REDACTED] [REDACTED] 5 Wellington Place Leeds 1LS 4AP
5.	Deliverables	See Schedule 2 (Specification) for further details.
6.	Start Date	18 <sup>th</sup> November 2022
7.	End Date	17 <sup>th</sup> November 2036
8.	Extension Period	Not applicable

<p>9. Incorporated Terms  (together these documents form the 'the Contract')</p>	<p>The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies:</p> <ol style="list-style-type: none"><li>1. This Award Form</li><li>2. Any Special Terms (see Section 10 Special Terms in this Award Form)</li><li>3. Core Terms (version 1.0)</li><li>4. Schedule 1 (Definitions)</li><li>5. Schedule 20 (Processing Data)</li><li>6. The following Schedules (in equal order of precedence):<ul style="list-style-type: none"><li>● Schedule 2 (Specification)</li><li>● Schedule 3 (Charges)</li><li>● Schedule 5 (Commercially Sensitive Information)</li><li>● Schedule 6 (Transparency Reports)</li><li>● Schedule 7 (Staff Transfer)</li><li>● Schedule 8 (Implementation Plan &amp; Testing)</li><li>● Schedule 9 (Installation Works)</li><li>● Schedule 10 (Service Levels)</li><li>● Schedule 11 (Continuous Improvement)</li><li>● Schedule 12 (Benchmarking)</li><li>● Schedule 13 (Contract Management)</li><li>● Schedule 14 (Business Continuity and Disaster Recovery)</li><li>● Schedule 16 (Security)</li><li>● Schedule 17 (Service Recipients)</li><li>● Schedule 18 (Supply Chain Visibility)</li><li>● Schedule 19 (Cyber Essentials Scheme)</li><li>● Schedule 20 (Processing Data)</li><li>● Schedule 21 (Variation Form)</li><li>● Schedule 22 (Insurance Requirements)</li><li>● Schedule 23 (Guarantee)</li></ul></li></ol>
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		<ul style="list-style-type: none"> <li>● Schedule 24 (Financial Difficulties)</li> <li>● Schedule 25 (Rectification Plan)</li> <li>● Schedule 27 (Key Subcontractors)</li> <li>● Schedule 28 (ICT Services)</li> <li>● Schedule 29 (Key Supplier Staff)</li> <li>● Schedule 30 (Exit Management)</li> <li>● Schedule 31 (Supply Chain Continuity Management)</li> <li>● Schedule 32 (Background Checks)</li> </ul> <p>[REDACTED]</p> <p><del>8.7.</del> Schedule 26 (Corporate Social Responsibility)</p> <p><del>9.8.</del> Schedule 4 (Tender) as long as any part of the Tender that offers a better commercial position for the Buyer takes precedence over the documents above</p>
10.	Special Terms	<p>Special Term 1 – Non-exclusivity</p> <p>1.1 The Supplier acknowledges that:</p> <p>(a) the Buyer is not obliged to purchase any Goods or Services from the Supplier under this Contract;</p> <p>(b) the Buyer makes no representation as to the number, type, or value of Goods or Services, that it may purchase, from the Supplier under this Contract; and</p> <p>(c) the Supplier cannot prevent the Buyer from purchasing from any third party any Good or Services, that are the same or similar to the Goods or Services referred to in this Contract.’</p>
11.	Buyer’s Environmental Policy	Available online at: <a href="https://www.gov.uk/guidance/measuring-and-reporting-environmental-impactsguidance-for-businesses">https://www.gov.uk/guidance/measuring-and-reporting-environmental-impactsguidance-for-businesses</a>
12.	Buyer’s Security Policy	As set out in Schedule 16 and Schedule 36
13.	Social Value Commitment	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with the social value commitments in Schedule 4 (Tender)]

14.	Commercially Sensitive Information	As set out in Schedule 5
15.	Charges	As set out in in Schedule 3 (Charges)
16.	Reimbursable expenses	Recoverable as set out in the expenses policy in Schedule 3 (Charges)
17.	Payment method	As set out in Schedule 3 (Charges)
18.	Service Levels	Service Credits will accrue in accordance with Schedule 10 (Service Levels) The Service Credit Cap is: as set out in Schedule 10 (Service Levels) The Service Period is as set out in Schedule 10 (Service Levels)
19.	Insurance	As set out in Annex of Schedule 22 (Insurance Requirements).
20.	Liability	In accordance with Clause 11.1 of the Core Terms each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater than [REDACTED]
21.	Cyber Essentials Certification	Cyber Essentials Scheme Plus Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)
22.	Progress Meetings and Progress Reports	The Supplier shall attend Progress Meetings with the Buyer every month or as agreed within Schedule 13 Contract Management. The Supplier shall provide the Buyer with Progress Reports as agreed as part of Schedule 6 (Transparency Reports).
23.	Guarantee	No Guarantee required.
24.	Supplier Contract Manager	[REDACTED]

25.	Supplier Authorise Representative	[REDACTED]
26.	Supplier Compliance Officer	[REDACTED]
27.	Supplier Data Protection Officer	[REDACTED]
28.	Supplier Marketing Contact	[REDACTED]
29.	Key Subcontractors	<p>Key Subcontractor 1</p> <p>Name (Registered name if registered) TWOFOLD LIMITED</p> <p>Registration number (if registered) 4043149</p> <p>Role of Subcontractor Delivery / Install and ongoing maintenance of X Ray equipment.</p>
30.	Buyer Authorised Representative	[REDACTED]

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:	[REDACTED]	Signature:	[REDACTED]
Name:	[REDACTED]	Name:	[REDACTED]
Role:	[REDACTED]	Role:	[REDACTED]
Date:	[REDACTED]	Date:	[REDACTED]



# Core Terms – Mid-tier

## 1. Definitions used in the contract

1.1 Interpret this Contract using Schedule 1 (Definitions).

## 2. How the contract works

2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form). If allowed by the Regulations, the Buyer can:

- make changes to Award Form
- create new Schedules
- exclude optional template Schedules
- use Special Terms in the Award Form to add or change terms

2.2 The Contract:

- is between the Supplier and the Buyer
- includes Core Terms, Schedules and any other changes or items in the completed Award Form

2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

2.4 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- verify the accuracy of the Due Diligence Information
- properly perform its own adequate checks

2.5 The Buyer will not be liable for errors, omissions or misrepresentation of any information.

2.6 The Supplier warrants and represents that all statements made, and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## 3. What needs to be delivered

### 3.1 All deliverables

#### 3.1.1 The Supplier must provide Deliverables:

- that comply with the Specification, the Tender Response and the Contract
- using Good Industry Practice
- using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract
- on the dates agreed
- that comply with Law

3.1.2 In the event that a level of warranty is not specified in the Award Form, the Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

### 3.2 Goods clauses

3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.

3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.

3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.

3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.

3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.

3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.

3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

### 3.3 Services clauses

3.3.1 Late Delivery of the Services will be a Default of the Contract.

3.3.2 The Supplier must co-operate with the Buyer and third-party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third-party suppliers.

3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.

3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.

3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

### 3.4 Optional Goods and Services

3.4.1 The Buyer may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Buyer is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Buyer from receiving services that are the same as or similar to the Optional Services from any third party.

3.4.2 If a request for a Variation is submitted by either party, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Variation request, provide details of the impact (if any) that the proposed Variation will have on the relevant Optional Services.

3.4.3 Following receipt of the Buyer's notice pursuant to clause 3.4.2 above:

- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Variation Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
- (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the reasonable instructions of the Buyer;
- (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Schedule 3 (Charges); and
- (d) the Supplier shall, from the date agreed with the Buyer, provide the relevant Optional Services to meet or exceed the applicable Service Levels.

## 4 Pricing and payments

4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.

4.2 All Charges:

- exclude VAT, which is payable on provision of a valid VAT invoice
- include all costs connected with the Supply of Deliverables

4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.

4.4 A Supplier invoice is only valid if it:

- includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer
- includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)

4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.

4.7 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may either:

- require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items; or
- enter into a direct agreement with the Subcontractor or third party for the relevant item

4.8 If the Buyer uses Clause 4.7 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

4.9 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:

- the relevant item being made available to the Supplier if required to provide the Deliverables
- any reduction in the Charges excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges

4.10 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

## 5. The buyer's obligations to the supplier

5.1 If Supplier Non-Performance arises from a Buyer Cause:

- the Buyer cannot terminate the Contract under Clause 10.4.1
- the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract
- the Supplier is entitled to additional time needed to make the Delivery
- the Supplier cannot suspend the ongoing supply of Deliverables

5.2 Clause 5.1 only applies if the Supplier:

- gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware

- demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause
- mitigated the impact of the Buyer Cause

## 6. Record keeping and reporting

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract for 7 years after the End Date and in accordance with the GDPR.

6.3 The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.

6.4 The Supplier must provide information to the Auditor and reasonable co-operation at their request.

6.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

- tell the Buyer and give reasons
- propose corrective action
- provide a deadline for completing the corrective action

## 7. Supplier staff

7.1 The Supplier Staff involved in the performance of the Contract must:

- be appropriately trained and qualified
- be vetted using Good Industry Practice and the Security Policy
- comply with all conduct requirements when on the Buyer's Premises

7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.

7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## 8. Rights and protection

8.1 The Supplier warrants and represents that:

- it has full capacity and authority to enter into and to perform the Contract
- the Contract is executed by its authorised representative
- it is a legally valid and existing organisation incorporated in the place it was formed
- there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract
- it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract
- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract
- it is not impacted by an Insolvency Event

8.2 The warranties and representations in Clauses 2.6 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

8.3 The Supplier indemnifies the Buyer against each of the following:

- wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
- non-payment by the Supplier of any tax or National Insurance

8.4 All claims indemnified under this Contract must use Clause 26.

8.5 The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.

8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## 8.8 WARRANTY AND GUARANTEES

### Warranty Period

- 8.8.1 Subject to paragraph 8.8.1 below, the Supplier warrants that all Goods will function without error and/or interruption in accordance with the requirements of Schedule 2 for a minimum of 12 months after the date of first use by the Buyer and/or Serviced Site as applicable. In the event of any failure(s), damage, or issue(s) with any Goods which occurs in the first 12 months and leaves any of the Goods unable to function without error and/or interruption in accordance with the requirements of Schedule 2 (“Failing Goods”), and such failure, damage, and/or issue is not caused directly by the Buyer’s use of Goods in contravention of the Supplier’s reasonable instructions, the Supplier shall, in addition to any of the rights of the Buyer under Schedule 10 (Service Levels), repair and/or replace the Failing Part (at the Buyer’s reasonable discretion) promptly and free of charge (for the avoidance of doubt, no labour charges, parts charges, or other fees and/or expensive may be charged to the Buyer). The Supplier shall provide to the Buyer its standard manufacturers’ fully inclusive warranty for the Goods to the extent such warranty exceeds the requirements of this clause 8.8.1 and shall provide the details of such warranty in writing promptly after the Start Date.
- 8.8.2 The Supplier warrants that all X-Ray Generators and Detectors shall function without error and/or interruption with the requirements of Schedule 2 for a minimum of 5 years after first use by the Buyer and/or Serviced Site as applicable. In the event of any failure(s), damage, or issue(s) with any X-Ray Generator and/or Detector which occurs in the first 5 years and leaves the X-Ray Generator and/or Detector unable to function without error and/or interruption in accordance with the requirements of Schedule 2 (“Failing Part”), and such failure, damage, and/or issue is not caused directly by the Buyer’s use of such X-Ray Generator and/or Detector in contravention of the Supplier’s reasonable instructions, the Supplier shall, in addition to any of the rights of the Buyer under Schedule 10 (Service Levels), repair and/or replace the Failing Part (at the Buyer’s reasonable discretion) promptly and free of charge (for the avoidance of doubt, no labour charges, parts charges, or other fees and/or expensive may be charged to the Buyer). The Supplier shall provide to the Buyer its standard manufacturers’ fully inclusive warranty for the X-Ray Generators and Detectors to the extent such warranty exceeds the requirements

of this clause 8.8.2 and shall provide the details of such warranty in writing promptly after the Start Date.

- 8.8.3 The Warranty for each Unit shall take effect from the point of complete installation of the Unit following successful commissioning without fault and meeting the Technical Goods Specification.
- 8.8.4 The Supplier shall ensure the Warranty covers all labour, parts and travel in connection to a warranty design and component failure claim.
- 8.8.5 The Supplier shall ensure the Buyer Warranty shall not be void for Buyer appointed third party trained repair or maintenance representatives.
- 8.8.6 For the avoidance of doubt, where the Supplier's standard Warranty conditions exceed any or all of the Buyer's requirements as detailed in 8.8.1. to 8.8.6, the Buyer reserves the right to accept in writing those elements of the Supplier's Warranty, over and above the requirements in 8.8.1. to 8.8.6.

## 9. Intellectual Property Rights (IPRs)

9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a nonexclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to:

- receive and use the Deliverables; and
- make use of the deliverables provided by a Replacement Supplier (including for the avoidance of doubt, but not limited to, permitting any Replacement Supplier to repair, maintain and/or Service the Goods).

9.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.

9.5 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- obtain for the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR
- replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables

## 10. Ending the contract

10.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.2 The Buyer can extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

### 10.3 Ending the contract without a reason

10.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier at least 90 days' notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.

### 10.4 When the Buyer can end the Contract

10.4.1 If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a Termination Notice to the Supplier:

- there's a Supplier Insolvency Event
- there's a Default that is not corrected in line with an accepted Rectification Plan
- the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
- there's any material Default of the Contract
- there's any material Default of any Joint Controller Agreement relating to the Contract
- there's a Default of Clauses 2.6, 9, 14, 15, 27, 32 or Schedule 19 (Cyber Essentials) (where applicable) relating to the Contract
- there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels)
- there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing

- there's a Variation to the Contract which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes)
- The Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded
- the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations
- the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them

10.4.2 If there is a Default, the Buyer can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

10.4.3 When the Buyer receives a requested Rectification Plan it can either:

- reject the Rectification Plan or revised Rectification Plan, giving reasons
- accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties

10.4.4 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:

- must give reasonable grounds for its decision
- may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.4.5 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clause 10.5.2 to 10.5.7 applies.

## 10.5 What happens if the contract ends

Where the Buyer terminates the Contract under Clause 10.4.1 all of the following apply:

10.5.1 The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

10.5.2 The Buyer's payment obligations under the terminated Contract stop immediately.

10.5.3 Accumulated rights of the Parties are not affected.

10.5.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.

10.5.5 The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.

10.5.6 The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.5.7 The following Clauses survive the termination of the Contract: 3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

## 10.6 When the supplier can end the contract

10.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within 30 days of the date of the Reminder Notice.

10.6.2 If a Supplier terminates the Contract under Clause 10.6.1:

- the Buyer must promptly pay all outstanding Charges incurred to the Supplier
- the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated ● Clauses 10.5.4 to 10.5.7 apply

## 10.7 When subcontracts can be ended

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing
- the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4
- a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer

## 10.8 Partially ending and suspending the contract

10.8.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.

10.8.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.8.3 The Parties must agree any necessary Variation required by Clause 10.8 using the Variation Procedure, but the Supplier may not either:

- reject the Variation
- increase the Charges, except where the right to partial termination is under Clause 10.3

10.8.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.8.

## 11. How much you can be held responsible for

11.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the [REDACTED]

11.2 No Party is liable to the other for:

- any indirect Losses
- Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect)

11.3 In spite of Clause 11.1, neither Party limits or excludes any of the following:

- its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
- its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
- any liability that cannot be excluded or limited by Law

11.4 In spite of Clause 11.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, 12.2 or 14.8 or Schedule 7 (Staff Transfer) of the Contract.

11.5 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.

11.6 When calculating the Supplier's liability under Clause 11.1 the following items will not be taken into consideration:

- Deductions
- any items specified in Clause 11.4

11.7 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## 12. Obeying the law

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Schedule 26 (Corporate Social Responsibility).

12.2 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

## 13. Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

## 14. Data protection

14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).

14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.

14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:

- tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier
- restore the Government Data itself or using a third party

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless the Buyer is at fault.

14.8 The Supplier:

- must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request
- must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading
- must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
- securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it
- indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

## 15. What you must keep confidential

15.1 Each Party must:

- keep all Confidential Information it receives confidential and secure
- not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract
- immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure
- if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party

- if the information was given to it by a third party without obligation of confidentiality
- if the information was in the public domain at the time of the disclosure
- if the information was independently developed without access to the Disclosing Party's Confidential Information
- to its auditors or for the purposes of regulatory requirements
- on a confidential basis, to its professional advisers on a need-to-know basis
- to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

15.4 The Buyer may disclose Confidential Information in any of the following cases:

- on a confidential basis to the employees, agents, consultants and contractors of the Buyer
- on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to
- if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions
- where requested by Parliament
- under Clauses 4.7 and 16

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information and any Information which is exempt from disclosure by Clause 16 is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

## 16. When you can share information

16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:

- publish the Transparency Information
- comply with any Freedom of Information Act (FOIA) request
- comply with any Environmental Information Regulations (EIR) request

16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

## 17. Invalid parts of the contract

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

## 18. No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

## 19. Other people's rights in the Contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## 20. Circumstances beyond your control

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

- provides a Force Majeure Notice to the other Party
- uses all reasonable measures practical to reduce the impact of the Force Majeure Event

20.2 Either party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

20.3 Where a Party terminates under Clause 20.2:

- each party must cover its own Losses
- Clause 10.5.2 to 10.5.7 applies

## 21. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## 22. Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

## 23. Transferring responsibilities

23.1 The Supplier cannot assign the Contract without the Buyer's written consent.

23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.

23.3 When the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

23.4 The Supplier can terminate the Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.

23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

- their name
- the scope of their appointment
- the duration of their appointment

## 24. Changing the contract

24.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing and signed by both Parties

24.2 The Supplier must provide an Impact Assessment either:

- with the Variation Form, where the Supplier requests the Variation
- within the time limits included in a Variation Form requested by the Buyer

24.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:

- agree that the Contract continues without the Variation
- terminate the affected Contract, unless the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them
- refer the Dispute to be resolved using Clause 34 (Resolving Disputes)

24.4 The Buyer is not required to accept a Variation request made by the Supplier.

24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.

24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:

- that the Supplier has kept costs as low as possible, including in Subcontractor costs
- of how it has affected the Supplier's costs

24.7 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

## 25. How to communicate about the contract

25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

25.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.

25.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## 26. Dealing with claims

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
- give the Indemnifier reasonable assistance with the claim if requested

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money
- the amount the Indemnifier paid the Beneficiary for the Claim

## 27. Preventing fraud, bribery and corruption

27.1 The Supplier must not during any Contract Period:

- commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2)
- do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them

27.2 The Supplier must during the Contract Period:

- create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
- keep full records to show it has complied with its obligations under Clause 27 and give copies to the Buyer on request
- if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

27.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- been investigated or prosecuted for an alleged Prohibited Act
- been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
- received a request or demand for any undue financial or other advantage of any kind related to the Contract
- suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.4 it must specify the:

- Prohibited Act
- identity of the Party who it thinks has committed the Prohibited Act
- action it has decided to take

## 28. Equality, diversity and human rights

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
- any other requirements and instructions which the Buyer reasonably imposes related to equality Law

28.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

## 29. Health and safety

29.1 The Supplier must perform its obligations meeting the requirements of:

- all applicable Law regarding health and safety
- the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier

29.2 The Supplier must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.

## 30. Environment

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## 31. Tax

31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:

- the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant
- other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:

- comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions
- indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding
- the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer
- the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements
- the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management

## 32. Conflict of interest

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest happens or is expected to happen.

32.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

### 33. Reporting a breach of the contract

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:

- Law
- Clause 12.1
- Clauses 27 to 32

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

### 34. Resolving disputes

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Buyer refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- determine the Dispute
- grant interim remedies
- grant any other provisional or protective relief

34.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International

Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier cannot suspend the performance of the Contract during any Dispute.

## 35. Which law applies

This Contract and any issues arising out of, or connected to it, are governed by English law.

## Schedule 1 (Definitions)

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In the Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter; 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 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";
  - 1.3.6 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;
  - 1.3.7 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 the Contract;
  - 1.3.8 references to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses and schedules of the Core Terms 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;
  - 1.3.9 references to "Paragraphs" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
  - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
  - 1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
  - 1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.

1.4 In the Contract, unless the context otherwise requires, the following words shall have the following meanings:

"Achieve"	in respect of a Test, to successfully pass such Test without any Test Issues 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;
"Affected Party"	the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliates"	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;
"Annex"	extra information which supports a Schedule;
"Approval"	the prior written consent of the Buyer and "Approve" and "Approved" shall be construed accordingly;
"Audit"	<p>the Buyer's right to:</p> <ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Schedule 26 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> </ul>

	<p>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</p> <p>i) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;</p> <p>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 Buyer has used its resources.</p>
"Auditor"	<p>a) the Buyer's internal and external auditors;</p> <p>b) the Buyer's statutory or regulatory auditors;</p> <p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>d) HM Treasury or the Cabinet Office;</p> <p>e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
"Buyer Cause"	<p>any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subjectmatter of the Contract and in respect of which the Buyer is liable to the Supplier;</p>
"BACS"	<p>the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;</p>
"Beneficiary"	<p>a Party having (or claiming to have) the benefit of an indemnity under this Contract;</p>
"Buyer Assets"	<p>the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;</p>
"Buyer Authorised Representative"	<p>the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;</p>

"Buyer Premises"	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
"Contract"	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"Contract Period"	the Contract Period in respect of the Contract;
"Central Government Body"	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>a) Government Department;</p> <p>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>c) Non-Ministerial Department; or</p> <p>d) Executive Agency;</p>
"Change in Law"	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Commercially Sensitive Information"	the Confidential Information listed in the Award Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
"Compliance Officer"	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

"Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and 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;
"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
"Contract"	the contract to be entered into between the Buyer and the Supplier for the provision of the Deliverables;
"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities and contract data;
"Contract Period"	the term of the Contract from the earlier of the: a) applicable Start Date; or b) the Effective Date until the applicable End Date;
"Contract Value"	the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;
"Contract Year"	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Controller"	has the meaning given to it in the GDPR;
"Core Terms"	the Buyer's standard terms and conditions for common goods and services which comprise one part of the Contract the full title of which is Core Terms – Mid-tier version 1.0;

"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <ul style="list-style-type: none"><li>a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:<ul style="list-style-type: none"><li>i) base salary paid to the Supplier Staff; ii) employer's National Insurance contributions; iii) pension contributions; iv) car allowances;</li><li>v) any other contractual employment benefits;</li><li>vi) staff training;</li><li>vii) work place accommodation;</li><li>viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</li></ul></li></ul>
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	<p>ix) reasonable recruitment costs, as agreed with the Buyer;</p> <p>b) costs incurred in respect of Supplier Assets 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 Buyer 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;</p> <p>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 Deliverables; and</p> <p>d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables; but</p> <p>excluding:</p> <p>a) Overhead;</p> <p>b) financing or similar costs;</p> <p>c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>d) taxation;</p> <p>e) fines and penalties;</p> <p>f) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and</p> <p>g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government 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;
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;

"Data Protection Legislation"	(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;
"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR
"Data Subject Access Request"	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;
"Deductions"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;
"Default"	any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;
"Delay Payments"	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Deliverables"	Goods and/or Services that may be ordered under the Contract including the Documentation;
"Delivery"	delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. "Deliver" and "Delivered" shall be construed accordingly;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the "Disaster Period");
"Disclosing Party"	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);

"Dispute"	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 34 (Resolving disputes);
"Documentation"	<p>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) is required to be supplied by the Supplier to the Buyer under the Contract as:</p> <ul style="list-style-type: none"> <li>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li> <li>b) is required by the Supplier in order to provide the Deliverables; and/or</li> <li>c) has been or shall be generated for the purpose of providing the Deliverables;</li> </ul>
"DOTAS"	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;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date;
"Effective Date"	the date on which the final Party has signed the Contract;
"EIR"	the Environmental Information Regulations 2004;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;

"End Date"	the earlier of: a) the Expiry Date (as extended by any Extension Period exercised by the Buyer under Clause 10.2); or b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
"Environmental Policy"	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 Buyer;
"Estimated Year 1 Charges"	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
"Estimated Yearly Charges"	means for the purposes of calculating each Party's annual liability under clause 11.2 : i) in the first Contract Year, the Estimated Year 1 Charges; or ii) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or iii) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
"Expiry Date"	the date of the end of the Contract as stated in the Award Form;
"Extension Period"	such period or periods beyond which the Initial Period may be extended up to a maximum of the number of years in total specified in the Award Form;

"FOIA"	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 Event"	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <p>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 a Contract;</p> <p>a) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>b) acts of a Crown Body, local government or regulatory bodies;</p> <p>c) fire, flood or any disaster; or</p>
	<p>d) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; 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</p> <p>iii) any failure of delay caused by a lack of funds;</p>
"Force Majeure Notice"	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;
"Award Form"	the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer;
" Incorporated Terms"	the contractual terms applicable to the Contract specified in the Award Form;
" Special Terms"	any additional terms and conditions specified in the Award Form incorporated into the Contract;
" Tender Response"	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)

"General Anti-Abuse Rule"	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;
"General Change in Law"	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;
"Goods"	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
"Good Industry Practice"	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;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government 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;
"Government Data"	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 of the Buyer's Confidential Information, and which:  i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract;
"Government Procurement Card"	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/governmentprocurement-card--2">https://www.gov.uk/government/publications/governmentprocurement-card--2</a> ;
"Guarantor"	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	Her Majesty's Revenue and Customs;

"ICT Policy"	the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> <li>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>b) details of the cost of implementing the proposed Variation;</li> <li>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;</li> </ul>
"Implementation Plan"	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;
"Independent Control"	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and "Independent Controller" shall be construed accordingly;
"Indexation"	the adjustment of an amount or sum in accordance with the Award Form;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Initial Period"	the initial term of the Contract specified in the Award Form;

<p>"Insolvency Event"</p>	<p>a) in respect of a person:</p> <p>b) 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 c) 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</p> <p>d) 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</p> <p>e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>f) 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</p> <p>g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>h) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p>
	<p>i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>j) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
<p>"Installation Works"</p>	<p>all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Contract;</p>

"Intellectual Property Rights" or "IPR"	<p>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, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>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</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"Invoicing Address"	the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;
"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;
"IR35"	<p>the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at:</p> <p><a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a>;</p>
"Joint Controller Agreement"	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of Processing;
"Key Personnel"	the individuals (if any) identified as such in the Award Form;
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	<p>any Subcontractor:</p> <p>a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</p>

	<p>b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</p> <p>c) with a Sub-Contract with the Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract,</p> <p>and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</p>
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;
"Law"	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;
"Lead Time(s)"	means the maximum period of time permitted for the Supplier in the provision of the Goods and Services as described in Schedule 2 (Specification) which will form the basis of the Service Levels and Key Performance Indicators of the Contract and shall be cascaded to any Sub-Contractors who are also to perform or deliver the Goods and Services
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Losses"	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 "Loss" shall be interpreted accordingly;
"Lots"	the number of lots specified in Schedule 2 (Specification), if applicable;
"Marketing Contact"	shall be the person identified in the Award Form;
"Milestone"	an event or task described in the Implementation Plan;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;

"National Insurance"	contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"New IPR"	<p>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR;</p>
"Occasion of Tax Non – Compliance"	<p>where:</p> <p>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:</p> <p>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; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</p>

<p>"Open Book Data"</p>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>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 Deliverables;</li> <li>b) operating expenditure relating to the provision of the Deliverables including an analysis showing:                         <ul style="list-style-type: none"> <li>i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>iv) Reimbursable Expenses, if allowed under the Award Form; c) Overheads;</li> <li>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</li> <li>e) the Supplier Profit achieved over the Contract Period and on an annual basis;</li> <li>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;</li> <li>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</li> <li>h) the actual Costs profile for each Service Period;</li> </ul>
<p>"Optional Services"</p>	<p>as per Schedule 2, Section 14.</p>
<p>"Original Equipment Manufacturer"</p>	<p>means the manufacturer of the Goods including Spares, consumables and accessories who holds the Intellectual Property for the Goods.</p>

"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
"Parliament"	takes its natural meaning as interpreted within by Law;
"Party"	the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;
"Personal Data"	has the meaning given to it in the GDPR;
"Personal Data Breach"	has the meaning given to it in the GDPR;
"Planned Preventative Maintenance Services" (or "Planned Preventative Maintenance (PPM)")	pre-planned scheduled maintenance in line with MoJ SFG20 Maintenance Schedules and as detailed within Schedule 2, Section 12.2.
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
"Progress Meeting"	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
"Progress Meeting Frequency"	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Award Form;
"Progress Report"	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
"Progress Report Frequency"	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Award Form;

<p>“Prohibited Acts”</p>	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:</p> <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> <p>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 the Contract; or</p> <p>c) committing any offence:</p> <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 Buyer or other public body; or</li> </ul> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
<p>“Protective Measures”</p>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> <li>a) the nature of the data to be protected</li> <li>b) harm that might result from Data Loss Event;</li> <li>c) state of technological development</li> </ul>
	<p>d) the cost of implementing any measures including but not limited to 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 the such measures adopted by it;</p>
<p>“Recall”</p>	<p>a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;</p>
<p>"Recipient Party"</p>	<p>the Party which receives or obtains directly or indirectly Confidential Information;</p>

<p>"Rectification Plan"</p>	<p>the Supplier's plan (or revised plan) to rectify it's breach using the template in Schedule 25 (Rectification Plan Template) which shall include:</p> <ul style="list-style-type: none"> <li>a) full details of the Default that has occurred, including a root cause analysis;</li> <li>b) the actual or anticipated effect of the Default; and</li> <li>c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</li> </ul>
<p>"Rectification Plan Process"</p>	<p>the process set out in Clause 10.4.2 to 10.4.4 (Rectification Plan Process);</p>
<p>"Regulations"</p>	<p>the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);</p>
<p>"Reimbursable Expenses"</p>	<p>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 Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> <li>a) travel expenses incurred as a result of Supplier Staff 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 Buyer otherwise agrees in advance in writing; and</li> <li>b) subsistence expenses incurred by Supplier Staff 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>
<p>"the Buyer's Confidential Information"</p>	<ul style="list-style-type: none"> <li>c) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights,</li> </ul>
	<ul style="list-style-type: none"> <li>trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</li> <li>d) 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 Buyer's attention or into the Buyer's possession in connection with the Contract; and</li> </ul> <p>information derived from any of the above;</p>

"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Reminder Notice"	a notice sent in accordance with Clause 10.6 given by the Supplier to the Buyer providing notification that payment has not been received on time;
"Replacement Deliverables"	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables , whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Subcontractor"	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
"Replacement Supplier"	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
"Request For Information"	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
"Required Insurances"	the insurances required by Schedule 22 (Insurance Requirements);
"Satisfaction Certificate"	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
"Schedules"	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
"Security Management Plan"	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
"Security Policy"	the Buyer's security policy, referred to in the Award Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;

"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Service Levels"	any service levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
"Service Period"	has the meaning given to it in the Award Form;
"Services"	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
"Service Transfer"	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
"Service Transfer Date"	the date of a Service Transfer;
"Sites"	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Deliverables are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li> <li>c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)</li> </ul>
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
"Spares"	means components of the Units as set out in Schedule 2 (Pricing) or as notified.
"Special Terms"	any additional Clauses set out in the Award Form which shall form part of the respective Contract;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;

"Specification"	the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form;
"Standards"	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 business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) standards detailed in the specification in Schedule 2 (Specification);</li> <li>c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time;</li> <li>d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
"Start Date"	the date specified on the Award Form;
"Storage Media"	the part of any device that is capable of storing and retrieving data;
"Sub-Contract"	any contract or agreement (or proposed contract or agreement), other than a Contract, pursuant to which a third party: <ul style="list-style-type: none"> <li>a) provides the Deliverables (or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;

"Supplier's Confidential Information"	a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the
	Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier; 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 the Contract; c) Information derived from any of (a) and (b) above;
"Supplier's Contract Manager"	the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
"Supplier Equipment"	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 Buyer) in the performance of its obligations under this Contract;
"Supplier Non-Performance"	where the Supplier has failed to: a) Achieve a Milestone by its Milestone Date; b) provide the Goods and/or Services in accordance with the Service Levels ; and/or c) comply with an obligation under the Contract;
"Supplier Profit"	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the Contract for the relevant period;
"Supplier Profit Margin"	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 Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;
"Supply Chain Information Report Template"	the document at Annex 1 of Schedule 18 Supply Chain Visibility;

"Supporting Documentation"	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable;
"Termination Notice"	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 the Contract on a specified date and setting out the grounds for termination;
"Test Issue"	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
"Test Plan"	a plan: a) for the Testing of the Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones;
"Tests and Testing"	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and "Tested" shall be construed accordingly;
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;
"Transparency Information"	the Transparency Reports and the content of the Contract, including any changes to this 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 Buyer; and (ii) Commercially Sensitive Information;
"Transparency Reports"	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
"Unit(s)"	means an X-Ray Baggage Security Scanner
"Variation"	has the meaning given to it in Clause 24 (Changing the contract);
"Variation Form"	the form set out in Schedule 21 (Variation Form);

"Variation Procedure"	the procedure set out in Clause 24 (Changing the contract);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Worker"	any one of the Supplier Staff which the Buyer, 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 Deliverables; and
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.
"Work Day"	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Work Hours"	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;



## Schedule 2 (Specification)

### 1. DEFINITIONS

Term	Definition
Accessories	additional Goods that the Buyer may order over the Term of the Contract
Buyer Contract Manager	the Buyer's commercial Contract Manager responsible and authorised to act on behalf of the Buyer for matters relating but not limited to: contract interpretation, governance, dispute resolution and change control
Buyer Project Lead	the Buyer member of staff who will lead on single or multiple site surveys and/or commissioning processes, co-ordinating activities and information from across the Buyer estate
Available Goods	means the goods made available by the Supplier for purchase by the Buyer [and/or any Participating Authority];
Commissioning Report	a report produced by the Supplier, or their Sub-Contractor, which includes at minimum: a) radiological survey of both environmental scatter exposure on the highest output setting of the Good b) dose radiation readings on each setting of the machine accessible by the operator
Commissioning	The installation, configuration and testing of the Goods into live service to the standards and outputs as set out in the Technical Goods Specification and Technical Performance Specification contained in Schedule 2
EC Declaration of Conformity (DoC)	means the certification for Conformity European following conformity assessment that the product meets EU Health and Safety and / or Environmental Standards.
Goods	shall mean all goods supplied by the Supplier under the Contract, including but not limited to: (a) Units; (b) Accessories; and (c) Spares;
High Security Premises	closed Sites which for prisons are characterised by prisoners whose escape would be highly dangerous to the public or national security (also referred to as Category A prisons).
Inco-Terms Delivered Duty Paid (DDP)	means that the Supplier fulfils their obligation to deliver when the Goods have been made available at the named place in the country of importation. The Supplier has to bear the risks and costs, including duties, taxes and other charges of delivering the Goods thereto, cleared for importation.
Lead Time(s)	means the maximum period of time permitted for the Supplier in the provision of the Goods and Services as described in Schedule 2 (Specification) which will form the basis of the Service Levels and Key Performance Indicators of the Contract and shall be cascaded to any Sub-Contractors who are also to perform or deliver the Goods and Services

Local Point of Contact	means the nominated point of contact on a Site, including deputies or other personnel as communicated to the Supplier, at the Site who will
	inform the Supplier of any information or arrangements specific to the locality and will co-ordinate with Site personnel any relevant activities within the Site.
Master Technical Product File	testing Certificates and individual component EC Declaration of Conformity Certificates that make up the EC Declaration of Conformity European (CE) Testing Certification.
Order	purchase of Goods by the Buyer or a Participating Authority, based on a written quotation following a survey, and only confirmed through communication by the Buyer of an official Purchase Order Form
Original Equipment Manufacturer (OEM)	means the manufacturer of the Goods including Spares, consumables and accessories who holds the Intellectual Property for the Goods.
Participating Authority / Authorities	a Contracting Authority with access to this Contract as named in the Contract Notice
Planned Preventative Maintenance Services (or “Planned Preventative Maintenance (PPM)”) )	pre-planned scheduled maintenance in line with MoJ SFG20 Maintenance Schedules
Product Code	unique Supplier reference identifying an individual Goods, accessories, Spares and accessories which is consistent throughout the Term of the Contract.
Project Delivery	means a project, formal (with project governance and methodologies based on the principles of Prince2® or similar) or informal, for the surveying, installation or commissioning of single or multiple Sites.
Purchase Order Form	a formal commercial agreement, communicated electronically by the Buyer or an agent acting on its behalf, to the Supplier confirming Goods, Services, and quantities at the agreed pricing.
Quotation Survey	a survey at an Buyer Site, provided free of charge, and including activities as set out in Schedule 2 (Specification).
Radiation Protection Advisor	a company, appointed by the Buyer independent of the Contract, providing inspection of Goods at Sites to ensure compliance with the Ionising Radiation Regulations 2017 (IRR17). As governed by the Health & Safety Executive and in compliance with the Ionising Radiations Regulations 2017 (IRR17).
Service Level Contract or Service Levels	has reference to all Lead Times and performance levels as set out in the Contract, Schedule 10 (Service Levels).
Site	shall have the same meaning as Premises. For the Buyer this will typically refer to Her Majesty’s Prison however other locations may be identified at the discretion of the Buyer as notified from time to time.
Site Implementation Plan	a plan, per Site or for multiple Sites, which details the key dates, milestones, critical activities and any dependencies necessary to achieve the commissioning into operation of the Goods.
Spares	means components of the Units as set out in Schedule 2 (Pricing) or as notified.
Standard Service Plan	the Suppliers Planned Preventative Maintenance and Reactive Maintenance services in compliance with the minimum and maximum requirements as set out in Schedule 2.
Substitute Items	means alternative Goods, accessories or Spares as to those which form part of the Contract, only permissible with the express written permission of the Buyer Contract Manager.
Technical Goods Specification	means the minimum technical requirements that the Goods must comply with as defined in Appendix A.
Technical Performance Specification	means the minimum technical performance or output of the Goods as defined in Appendix B.
Unit(s)	means an x-ray baggage security scanner

Warranty	describes the conditions under, and period during, which the Supplier and/or OEM will repair, replace, or other compensate for, the defective item without cost to the Buyer or Participating Authority
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2. INTRODUCTION, PURPOSE, SCOPE OF REQUIREMENTS

2.1 Introduction

This Schedule 2 (Specification) constitutes the specification requirements for the supply and maintenance of security x-ray baggage screening technology.

3. SCOPE OF REQUIREMENTS

3.1 Provision of Goods & Services

3.1.1 This Buyer specification relates to the national supply, installation and support Services for security x-ray baggage scanners within the Buyer’s agency, HM Prison and Probation Service in England & Wales, and other authorities as detailed within Schedule 17 (Service Recipients).

3.1.2 Where the Buyer has contracted a third-party service provider to manage its Sites (Private Managed Prison Provider (PMPP)) the Supplier will be required to offer to the PMPP the Goods in accordance with this Schedule, at the same pricing (Schedule 3 – Charges) and, where negotiation on terms may occur between the Supplier and PMPP, on terms which are no less favourable than the Contract.

3.2 Technical Specification

3.2.1 The Supplier shall supply the Goods in accordance with the Technical Goods Specification attached at Appendix A, and the Technical Performance Specification can be found attached at Appendix B.

3.3 Demand for Goods

3.3.1 The Buyer shall identify demand for orders of Goods and Services through business need on an ad-hoc basis by Buyer or Participating Authority Sites.

3.3.2 The Supplier shall be required at all times to fulfil orders for Goods & Services placed by the Buyer within the agreed Lead Times or as otherwise agreed between the Parties. Lead Times are as detailed within Appendix D.

3.3.3 The Supplier shall ensure that contingency arrangements are in place for alternative supply of Goods & Services should the Supplier find they are unable to comply with

the relevant Lead Times. Where a Sub-Contractor is used, the Supplier shall ensure that the Goods & Services provided by that Sub-Contractor meet the Buyer's requirements under this Contract.

### 3.4 DEMAND – ORDERING OF GOODS

- 3.1 Goods will be ordered by means of the transmission of an official Purchase Order Form following either the acceptance of a compliant quotation (against specific or bespoke needs) or against the Schedule 3 (Charges).

## 4. GOODS STANDARDS, REGULATORY & LEGISLATIVE COMPLIANCE

### 4.1 UKCA Mark

4.1.1 The Supplier shall supply all Goods in compliance with UKCA conformity requirements and shall ensure all applicable Goods carry where required the UKCA Mark after 31<sup>ST</sup> December 2022. Directives such as Low Voltage Directive (LVD) and Electro Magnetic Compatibility (EMC) will remain self-declaration under UKCA.

4.1.2 The Supplier shall issue to the Buyer upon request:

- (a) a copy of the Declaration of Conformity (DoC) Certificate for each of the Goods supplied; and,
- (b) a full copy of the Master Technical Product File including:
  - (i) certificates;
  - (ii) Health & Safety Test certificates; and (iii) the technical product file(s).

### 4.2 Legislation and Compliance

4.2.1 The Supplier shall ensure that a Goods & Services (including Supplier Systems) shall be compliant with all applicable Laws, including but not limited to:

- (a) The Ionising Radiations Regulations 2017 (IRR17 as amended);
- (b) Consumer Rights Act 2015 (as amended);
- (c) Electromagnetic Compatibility Regulations 2016;
- (d) Electrical Equipment (Safety) Regulations 2016;
- (e) Supply of Machinery (Safety) Regulations 2008;
- (f) The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (as amended); and
- (g) The Waste Electric and Electronic Equipment (WEEE) Regulations 2013.

## 5. DURABILITY & QUALITY OF GOODS

## 5.1 Manufactured Goods

- 5.1.1 All Goods supplied shall be supplied new and unused, unless requested and agreed in writing by the Buyer Contract Manager or the Participating Authority Contract Manager in relation to any Order.
- 5.1.2 All components which make up the Goods supplied shall have a minimum designed expected operational life of 10 years based on 4,380 hours use per annum.
- 5.1.3 No prototypes or non-production / concept models shall be accepted without the Buyer's Contract Manager's prior written approval.
- 5.1.4 The Supplier shall promptly upon becoming aware of any issues relating to the durability, effectiveness, and/or and safety any Goods and/or Available Goods notify the Buyer in writing of such issues ("Known Issues"), including within such notification:
  - 5.1.4.1 the Goods and/or Available Goods affected (or which may be affected), including the names and applicable batch number(s) of such affected Goods and/or Available Goods;
  - 5.1.4.2 the date upon which the Known Issue(s) commenced and the date on which the Supplier became aware of the Known Issue;
  - 5.1.4.3 the Supplier's recommended alternative to the Goods and/or Available Goods affected by the Known Issue(s); and
  - 5.1.4.4 any known fixes and/or repairs for the Known Issue(s) and the date(s) by which such fixes and/or repairs can be implemented. Where the Buyer [and/or a Participating Authority] submits an Order for Available Goods affected by any Known Issues, the Supplier shall promptly notify the Buyer and/or such Authority of the Known Issue prior to accepting and/or processing the Order, and recommend an alternative solution. In the event the Supplier fails to notify the Buyer and/or Participating Authority (as applicable) of Known Issues in accordance with this paragraph, the Supplier shall at the Buyer's request promptly:
    - 5.1.4.5 rectify all faults caused by and/or attributable to the Known Issue(s);
    - 5.1.4.6 and/or offer replacement Goods which do not suffer from the Known Issues(s); and/or
    - 5.1.4.7 issue a full refund for the Goods affected by the Known Issue(s). Buyer
- 5.1.5 Where any Known Issue is attributable to a manufacturer's design or material deficiency, the Supplier shall underwrite the repair during the operational life of the Goods.
- 5.1.6 The Supplier shall ensure all Goods are be in current production, and shall not supply obsolescent Goods without the written express permission of the Buyer Contract Manager.
- 5.1.7 The Supplier shall provide all Units with an OEM maintenance schedule for regular and periodic maintenance tasks.

## 5.2 Accessories

- 5.2.1 The Supplier shall ensure all Accessories are rated ‘heavy duty’ or the equivalent and are suitable to withstand moderate impact.

## 6 SPARES PROVISION

### 6.1 Spares Support

- 6.1.1 The Supplier shall ensure the availability of all manufacturer’s parts for the Units and shall ensure that the Goods are capable of being maintained in good working order for a minimum period of ten (10) years from receipt of each Unit.
- 6.1.2 The Supplier shall maintain efficient and effective arrangements for securing the delivery to any Site of any of the Goods required for the continued operation of the Units during the Contract Period.
- 6.1.3 The Supplier shall make Spares available to the Buyer and/or its nominated third-party representative without any detriment to the Service levels, Lead Times or Charges.
- 6.1.4 The Supplier must provide a comprehensive list of spare parts including UK stock holding (including location), price, with pricing details included within Schedule 3 (Charges). The Supplier shall comply at all times with spares delivery lead times and minimum spares stock holding levels, both for engineers and user installation purposes, as detailed within Appendix E below.
- 6.1.5 Spares that commonly fail must be kept in engineer’s vehicles to allow delivery of first-time fix service levels.
- 6.1.6 The Supplier must hold within the UK during the Contract Period, sufficient Spares and Accessories to maintain the Units for a minimum period of 12 months (the Minimum Spare Parts Stock Holding Level), based upon reasonable breakdown and parts usage forecasts, to be provided upon request by the Buyer, to be requested no more than 4 times per annum. Such forecasts to be agreed in advance with the Buyer, with both Parties acting reasonably. The Buyer shall have the right to purchase all or part of the Minimum Spare Parts Stock Holding Level as detailed within contract Schedule 31 (Supply Chain and Continuity Management, Section 5) following the occurrence of a “Step-In Trigger event” (as detailed within contract Schedule 31). See also Appendix E to this Schedule 2.
- 6.1.7 The Supplier shall deliver first time fix rates in accordance with the Service Levels and maintain inventory holding at base and on vehicles to allow first time fix rate compliance.

## 7 TECHNICAL PRODUCT REFRESHMENT (VARIATION)

### 7.1 Goods

- 7.1.1 Any changes to the supply or variants to the minimum requirements demanded (as set out in Appendix A the Technical Goods Specification and Appendix B, The Technical Performance Specification) shall be completed in accordance with the Variation Procedure.

## 8. PRISON SECURITY & RESTRICTIONS – CONTRACT SPECIFICS

### 8.1 Security Clearance

- 8.1.1 The Supplier shall ensure any and all Supplier Staff entering prison Sites obtain and maintain UK security clearance at Enhanced Level 1 to carry out installation and maintenance Services for the duration of the Contract, except where the Site is a High Security Premises, in which case the Supplier shall ensure that the relevant Supplier Staff obtain and maintain security clearance at Enhanced Level 2 and a compliant Counter Terrorism Check.

- 8.1.2 Where a member of Supplier Staff fails to obtain security clearance in accordance with paragraph 8.1.1 above, the Supplier or Sub-Contractor shall make available the resource to carry out the Services and submit additional personnel forms in line with the above Lead Times. Failure to do so may result in the termination of the Contract.

- 8.1.3 The Supplier shall ensure that, at all times during the Contract Period, there is an adequate number of Supplier Staff with the security clearance required under to cover any absences and holiday periods and provide business contingency to comply with Lead Times under this Contract.

### 8.2 Photographic Identification

- 8.2.1 All Supplier or Sub-Contractor staff will be required to carry and present official photographic identification to enter a Site (and specifically a secure prison environment), in line with Supplier requirements. The Supplier shall confirm acceptable ID documentation to the winning tenderer prior to the commencement of the Contract.

### 8.3 Site Conduct

- 8.3.1 The Supplier shall comply with any local security, health and safety, delivery restrictions and requirements on Site which may be required. Such requirements to be discussed directly with sites prior to any planned visits.

## 9 PLACEMENT OF ORDERS

## 9.1 Placement of Orders

- 9.1.1 Any Order placed by the Buyer or any Participating Authority/ies shall be confirmed through the issuing of a Purchase Order Form with a unique Purchase Order number, emailed direct to the Supplier. This will be based on the Quotation Survey and the Goods pricing as contained within Schedule 2 (Prices and Invoicing).
- 9.1.2 The Supplier shall not make any provision for Supply of Goods outside the purchasing process as described in Section 3.4 above, unless agreed and confirmed in writing by the Buyer's or Participating Authority's Contract Manager for that Call-Off.
- 9.1.3 In the absence of any service packages being purchased on an estate basis, Planned Preventative Maintenance Services for the Goods, following the expiration of the Warranty, shall be subject to the issuing of a subsequent Purchase Order Form being raised by a Site. Order for reactive maintenance repair, falling outside of Warranty, or the supply of Spares will be subject to the issuing of a separate Purchase Order Form, per event. Alternatively, the Buyer or Participating Authority(/ies) may issue a blanket Purchase Order for each financial year covering all Goods located across Sites; this to be confirmed in writing by the Buyer.

## 9.2 Mobilisation

- 9.2.1 Upon the receipt of an official Purchase Order Form, the Supplier's representative shall contact the Local Point of Contact at Site or an Buyer Project Lead to arrange attendance and installation.
- 9.2.2 The Supplier may also be required to carry out a pre-installation meeting to organise access, health & safety induction, submission of risk assessments and method statements, security restrictions and potentially arrange security clearance dependant on the local Site requirements. The Supplier shall confirm the requirements for each Site prior to submitting any quotation.
- 9.2.3 For small items that require delivery without specific handling equipment, the Supplier shall contact the Local Point of Contact at Site for a delivery slot and or gate opening times.
- 9.2.4 Where Project Delivery is required on large orders as informed by the Buyer the Supplier shall procure that its nominated Sub-Contractor shall, produce and agree a project plan with the Local Point of Contact at Site and/or the Buyer Project Lead.

## 9.3 Lead Times

- 9.3.1 The Supplier shall comply with the Lead Times, as detailed within Appendix D below.

## 10 DELIVERY SPECIFICS

### 10.1 Deliveries

- 10.1.1 Deliveries shall be shipped to the address detailed in the Purchase Order Form, unless any other arrangements are agreed in advance between the Supplier and the Buyer in writing.
- 10.1.2 Costs associated with delivery shall be listed as a separate item on a quote or invoice and delivered on Inco-Terms Delivered Duty Paid (DDP).
- 10.1.3 The Supplier shall follow all guidelines as detailed within the Site Delivery Handbook (XRBS\_Site\_Delivery\_Handbook.doc) which is available within the uploaded documents area of the e-portal.
- 10.1.4 The Supplier shall comply with the delivery requirements for the Goods to Site(s) as specified in each Order.
- 10.1.5 In delivering the Goods, the Supplier shall:
  - (a) Ensure that appropriate vehicles are used on each occasion to ensure compliance with all health & safety, road safety and other governing regulations;
  - (b) Ensure that its delivery vehicles comply with any dimensions and restrictions communicated by the Buyer in writing, in the Purchase Order Form or by separate documentation and any delivery restrictions within the vicinity of the location;
  - (c) Ensure that any handling Equipment is on the vehicle unless where a forklift is required. The Supplier may request use of an Buyer forklift and the Buyer will confirm availability if there is one present on Site;
  - (d) Ensure, where appropriate, that Goods are supplied on pallets to aid removal from a vehicle.
- 10.1.6 The Supplier recognises that, due to the strict operational restrictions involved in the prison environment, it is imperative that all deliveries are made within the timeslots that have been agreed. Buyer personnel shall confirm the best delivery times for each Site during mobilisation, prior to each visit to Site. Deliveries shall not, except by prior arrangement and confirmed in writing, be accepted by the Buyer outside of agreed timeslots. If the Buyer rejects any deliveries, the Supplier shall be informed by the Buyer of a suitable time for the

Goods to be re-delivered and the Supplier shall complete the Delivery on such date at such time free of charge.

- 10.1.7 There shall be no additional charge where a Supplier / Sub-Contractor has not arranged a timeslot for delivery and is refused entry to any location.
- 10.1.8 The Supplier shall contact the Site where the Goods are to be delivered at least 24 hours prior to the day of delivery to confirm the estimated time of arrival of the delivery vehicle.

## 10.2 Delivery Advice Note

10.2.1 Each delivery consignment shall contain a delivery note and shall be attached to the Goods order. This shall contain relevant information to identify and audit the relevant delivery which, as a minimum, shall include:

- (a) The Buyer or Participating Authority's Purchase Order number
- (b) Delivery address and Contact Name
- (c) Customer account number (as assigned by the Supplier)
- (d) Line product detail including pack size and quantity
- (e) Number of cartons in consignment
- (f) Identification of any outstanding Goods, Spare or Accessories not delivered on order

## 10.3 Substitute Items

10.3.1 The Supplier shall not use Substitute Items without expressed permission of the Buyer Contract Manager. No agreements made locally by Sites to accept substitute items will be valid and the Buyer must be notified of any items where stock levels are zero (out of stock) during the life of the Contract. In the event any of the Goods are out of stock, the Buyer shall notify the Buyer and the Buyer may at its discretion cancel the affected Order.

10.3.2 In the event of an agreed Substitute Item being dispatched by the Supplier and the Product Code, line description or price differing, then the Supplier shall advise the Site to cancel the order and re-submit the Purchase Order Form under the new Product Code, line description and price to facilitate electronic invoice matching.

10.3.3 Where agreed and approved by the Buyer Contract Manager, Substitute Items shall be supplied at the same specification and Contract price. Where such a Good(s) is of lower value, the Buyer expects to benefit from the reduction in price, as reflected in the Supplier's quote and invoice.

10.3.4 The Buyer will not accept part delivery on Goods to facilitate an installation and has the right to charge the Supplier for any losses incurred as a result of their delays.

## 10.4 Delivery Discrepancies

10.4.1 In the event that the Buyer or Participating Authority experiences a delivery discrepancy (i.e. full order not fulfilled) with a delivered consignment, this shall be communicated to the Supplier by telephone or email, identifying the original purchase order number and Site location as reference. The Supplier shall investigate the matter and re-supply/fulfil order of the Goods, as required, such investigation to be commenced immediately upon notification and order fulfilment completed within the timescales detailed within Schedule 10 (Service Levels).

10.4.2 Where the Supplier claims delivery has taken place, the Buyer shall require a legible signed proof of delivery, containing all relevant details to include but not limited to

the time and exact location of the delivery and the name and signature of the person taking delivery, to ascertain a delivery has been made in the event of a dispute.

10.4.3 Where the Supplier and Buyer are in dispute, this shall be escalated to the Buyer's Contract Manager for discussion with the Supplier's Contract Manager.

10.4.4 The Supplier shall be liable for the cost of collection and re-delivery for discrepancies.

#### 10.5 Quality Discrepancies

10.5.1 Where the Goods supplied do not meet the requirements in this Schedule the Buyer shall notify the Supplier in writing, detailing the quality concerns (i.e. damaged Goods, Incorrect Goods, Goods do not meet the quality requirements).

10.5.2 Visible quality discrepancies will be reported within 5 working days except where the Goods are subject to installation and this will be extended to the final installation date.

10.5.3 Within 3 days of the Suppliers receipt of the quality discrepancy, the Supplier shall contact the Buyer to discuss remedy. Where the Supplier agrees the Goods do not meet the required standard of quality, the Supplier shall replace the Goods in question at their own expense.

10.5.4 Where the Supplier and Buyer cannot agree an appropriate solution to those quality issues as described in 13.5.1, the issue shall be escalated to the Buyer's Contract Manager and Supplier Contract Manager for resolution. Should this process not remedy the situation, the Contract Dispute Resolution procedure will be followed.

#### 10.6 Returns Liability

10.6.1 If Goods are to be returned to the Supplier, then the following applies:

(a) Where the Goods do not meet the required quality or where the Goods do not meet the requirements stated within the Contract or Purchase Order Form, the Goods shall be collected by the Supplier and re-delivered at their own expense.

(b) Where an incorrect Order has been placed for small stock consumable items the Supplier shall agree a return subject to a re-stocking charge and carriage costs.

#### 10.7 Incoterms 2010 Delivered Duty Paid (DDP)

13.7.1 All Goods to be supplied from outside the United Kingdom under Incoterms 2010 Delivered Duty Paid (DDP), except where specifically specified in any Call Off Contract.

## 11 IMPLEMENTATION AND INSTALLATION SPECIFICS

- 11.1 The Supplier shall comply with the obligations set out in Schedule 9 (Installation Works) (the “Installation Services”).
- 11.2 The Supplier shall comply with the obligations set out in Schedule 8 (Implementation Plan and Testing).
- 11.3 Training
- 11.3.1 Where required, the Supplier / Sub-Contractor is responsible for providing basic operator training in respect of controls and safe use. This shall be included in the commissioning process and included in the installation costs. Image interpretation training is not required.
- 11.4 Units Handover Documentation
- 11.4.1 Implementation and Testing details contained within Schedule 8 (Implementation and Testing)
- 11.4.2 Prior to the Supplier / Sub-Contractor handing over the Goods to the Buyer, the Supplier / Sub-Contractor shall provide documentation to allow the Buyer to manage and support the Goods, this includes, but shall not be limited to:
- a) Operating manuals in an electronic format written in English.
  - b) Goods configuration information.
  - c) Test and acceptance documentation (including relevant H&S compliance declarations)
  - d) Preventative Service Maintenance schedules and tasks including:
    - i. First service level - Customer capable servicing duties.
    - ii. Second service level - Third party maintainer / repair tasks.
    - iii. Third service level - Original Equipment Manufacturer tasks for specialist and/or non-serviceable components

All documents to be supplied in English.

## 12 SERVICE & MAINTENANCE

### 12.1 Annual Service Packages Menu

- 12.1.1 The Supplier shall offer the following Service packages (each a “Service Package” and together the “Service Packages”) for purchase by the Buyer and/or the Participating Authorities at the Buyer’s discretion (applicable charges in accordance

with Schedule 3 (Charges), service levels to be delivered in accordance with Schedule 10 (Service Levels):

### 1. MoJ Bronze Service Package

- 1.1 The MoJ Bronze Service Package consists of the following.
  - 1.1.1 2 Planned Preventative Maintenance visits (PPMs) to be provided by the Supplier per annum (see Section 12.2 below for PPM requirements).
  - 1.1.2 All Reactive Maintenance Call-Outs (Critical and Non-Critical) to be provided by the Supplier (see Section 12.3 below for Reactive Maintenance Call-Outs (Critical and Non-Critical) requirements).
  - 1.1.3 The labour rate for Reactive Call-Outs (Critical and Non-Critical) shall be chargeable separately to the Buyer, in accordance with Schedule 3 (Charges).
  - 1.1.4 Parts used during Reactive Call-Outs (Critical and Non-Critical) shall be chargeable separately to the Buyer, in accordance with Schedule 3 (Charges).
  - 1.4.5 Service Levels shall be delivered in accordance with Schedule 10 (Service Levels).

### 2. MoJ Silver Service Package

- 2.1 The MoJ Silver Service Package consists of the following.
  - 2.1.1 2 Planned Preventative Maintenance visits (PPMs) to be provided by the Supplier per annum (see Section 12.2 below for PPM requirements).
  - 2.1.2 All Reactive Maintenance Call-Outs (Critical and Non-Critical) to be provided by the Supplier (see Section 12.3 below for Reactive Maintenance Call-Outs (Critical and Non-Critical) requirements).
  - 2.1.3 The labour rate for all Reactive Call-Outs (Critical and Non-Critical) shall not be chargeable to the Buyer, including labour costs relating to any further visits required to rectify the reported fault.
  - 2.1.4 Parts used during Reactive Call-Outs (Critical and Non-Critical) shall be chargeable to the Buyer in accordance with Schedule 3 (Charges).
  - 2.1.5 To include unlimited call outs.
  - 2.1.6 Service Levels shall be delivered in accordance with Schedule 10 (Service Levels).

### 3. MoJ Gold Service Package

- 3.1 The MoJ Gold Service Package consists of the following.
  - 3.1.1 2 Planned Preventative Maintenance visits (PPMs) to be provided by the Supplier per annum (see Section 12.2 below for PPM requirements).

- 3.1.2 All Reactive Maintenance Call-Outs (Critical and Non-Critical) to be provided by the Supplier (see Section 12.3 below for Reactive Maintenance Call-Outs (Critical and Non-Critical) requirements).
- 3.1.3 The labour rate for all Reactive Call-Outs (Critical and Non-Critical) shall not be chargeable to the Buyer, including labour costs relating to any further visits required to rectify the reported fault.
- 3.1.4 Parts used during Reactive Call-Outs (Critical and Non-Critical) shall not be chargeable to the Buyer.
- 3.1.5 To include unlimited call outs and unlimited parts usage.
- 3.1.6 Service Levels shall be delivered in accordance with Schedule 10 (Service Levels).

## 12.2 Planned Preventive Maintenance Visits (PPM Visits)

- 12.2.1 PPM maintenance Service Levels and Service Credits are detailed within Schedule 10 (Service Levels).
- 12.2.2 Details and pricing of PPM visits are included within Schedule 3 (Charges).
- 12.2.3 All Goods shall be supported with a free fully inclusive minimum 12 months parts warranty including a minimum of two preventive maintenance visit, or in line with technical recommendations, as part of the initial purchase (detailed separately within the pricing schedule). This shall include all labour, travel, consumables and Spare parts required in conjunction with the warranty and preventive maintenance package.
- 12.2.4 The Supplier shall complete Service and preventative maintenance work and schedules accordance with the OEM maintenance schedule and as a minimum SFG 20 tasks, as contained within Appendix C.
- 12.2.5 All Spares supplied shall be new OEM parts, unless agreed upfront in writing by the Buyer Contract Manager, and shall be of equal or better quality and not affect the safety of the operation nor invalidate any Goods warranties.
- 12.2.6 All consumables, service and preventive maintenance Spare parts shall be new and included within the service cost or clearly identified as extras on any quotation and purchase, as part of the whole life cost submission at tender stage.
- 12.2.7 The Supplier shall have full access to quality diagnosis and radiation calibration Equipment including OEM engineering codes for hardware and software maintenance. Dosimeters shall be of sufficient quality to accurately read radiation dose and annual calibration certificates shall be provided upon request to the Buyer.
- 12.2.8 Where the Supplier has equipment already on site with a servicing schedule, to minimise cost and disruption, it is expected that all equipment (old and new) will be serviced/maintained during the same site visit.
- 12.2.9 A PPM Service Schedule will be prepared by the Supplier to include details of each individual X ray Baggage Scanner unit and agreed with the Authority, to be used for PPM visit planning, booking and reporting purposes.
- 12.2.10 The PPM Service Schedule will detail the Target PPM Visit Date (the 6-month anniversary of the previous PPM visit) and also the date agreed with the prison for the actual PPM visit to take place

(PPM Visit Booking Date). To allow reasonable operational flexibility, the PPM service visit (PPM Visit Booking Date) may be booked within 4 weeks before or 2 weeks following the Target PPM Visit Date.

#### 12.2.11 Target PPM Visit Date:

A planned Preventative Maintenance (PPM) Service Schedule will be prepared by the supplier for each individual x ray baggage scanner unit (detailed above). The PPM Service Schedule will list the Target PPM Visit Dates, being the 6-month anniversaries of the previous PPM visits (PPM visit volumes may be dependent upon the contract in place from time to time). Each PPM visit will follow the technical requirements as appropriate and as detailed within the Service Checklist, as detailed within Schedule 2, Appendix B.

#### 12.2.11 Working Day

A Working Day means Monday – Friday (9.00 am – 5.00 pm), excluding weekends and UK Bank Holidays.

### 12.3 Reactive maintenance

12.3.1 Reactive maintenance Service Levels and Service Credits are detailed within Schedule 10 (Service Levels).

12.3.2 Details and pricing of reactive maintenance visits are included within Schedule 3 (Charges).

12.3.3 Parts Usage Requirements: The Supplier shall provide parts to facilitate a successful repair on the Unit as required. Charges, where applicable shall be in accordance with Schedule 3 (Charges). All parts shall be guaranteed in accordance with Core Terms, Clause 8.8 (Warranty and Guarantees).

#### 12.3.4 Reactive Maintenance Call-Outs (Critical Failures):

- Critical Failures means where the Goods operation is impacted or there are Health & Safety issues.
- Reactive Maintenance Call-Outs (Critical Failures) are applicable to each individual chargeable Reactive Maintenance Visit for Critical Failures, where an engineer site visit has taken place and the reported fault has been resolved.
- This service includes all labour requirements, including labour relating to any further visits required to rectify the reported fault.
- The service and charges shall include all related travel costs and expenses, including mileage charges and accommodation charges.
- The service and charges shall include all consumables required to complete the repair.
- The Reactive Maintenance Call-Out Charge does not include the cost of Parts, which shall be charged separately, [as detailed within Schedule 3 (Charges)],
- The response time shall be 24 hours as detailed within Schedule 10 (Service Levels). Standard working Week – excluding weekends and public holidays.

#### 12.3.5 Reactive Maintenance Call-Outs (Non-Critical Failures)

- Non- Critical Failures means where the Goods require an engineer to attend a reported issue whilst the Goods remains operational and there are no Health & Safety issues.
- This charge is applicable to each individual chargeable Reactive Maintenance Visit for Non-Critical Failures, where an engineer site visit has taken place and the reported fault has been resolved.
- Charge to include all labour costs, including labour costs relating to any further visits required to rectify the reported fault.
- To include all related travel costs and expenses, including mileage charges and accommodation charges.
- To include all consumables required to complete the repair.
- The Reactive Maintenance Call-Out Charge does not include the cost of Parts, which shall be charged separately, as per Section 6 of Schedule 3 (Charges).
- The response time shall be 48 hours as detailed within Schedule 10 (Service Levels). Standard working Week – excluding weekends and public holidays.

#### 12.4 General provisions

- 12.4.1 For all visits, the supplier shall complete a job sheet, a copy of which shall be left on Site and also supplied electronically to the Authorities Contract Manager upon request.
- 12.4.2 The Suppliers shall make UK Spares inventory available for inspection by the Buyer at any time. Inspection by the Buyer, or a nominated third-party audit supplier acting on its behalf, may be unannounced.
- 12.4.3 The Buyer makes provisions within this Contract to novate some or all future maintenance services to its nominated Buyer maintenance provider by following the formal Change Control process included within Schedule 21 (Variation Form). .
- 12.4.4 There shall be no detriment to Spares pricing under a Planned Preventative Standard Service Plan whether supplied direct to the Buyer or to a third party who may be nominated by the Buyer in future. The Buyer shall not be liable for follow up visit costs where the Supplier has not facilitated engineers van stock holding.

#### 12.5 Upgrades, overhaul and Goods integration

- 12.5.1 The Supplier shall be required to perform upgrades, overhaul and Goods integration that do not form part of their initial supply and installation, subject to quotation acceptance by the Buyer. Such updates may relate to, but are not limited to, software or key hardware components.

#### 12.6 Software upgrades

- 12.6.1 The Supplier shall upgrade any software (inclusive of Buyer, Supplier and Third-Party Software) patches, fix software bugs to either correct or improve the operation or stability of the Goods.
- 12.6.2 For upgrades and new software version releases (inclusive of Buyer, Supplier and ThirdParty Software) the Supplier shall notify the Buyer of any revision and apply any software upgrades as part of

maintenance activities free of charge, unless this is a commercial version release as a separate purchased product.

12.6.3 New software functionality (outside of that as set out in Appendix A the Technical Goods Specification) may be introduced in two ways:

- a) Buyer request to the Supplier
- b) Supplier innovation proposal

12.6.4 Where a request or proposal is made the Supplier will be required to submit a proposal which details the functionality or performance changes, the benefits to the Buyer, development time required and any costs, including day rates for development and testing if chargeable. Minor software enhancements to the existing functionality specified are excluded from this process. All software upgrades and enhancements must undergo suitable user acceptance testing and receive the approval of the Buyer prior to upgrades taking place.

12.6.5 The Buyer will review any proposal, whether in response to a Buyer request or as part of Supplier innovation, and has the sole discretion as to accept, clarify or reject the proposal. Should the proposal be accepted the Buyer Contract Manager will confirm this in writing and it will be formalised through the Variation Procedure.

## 12.7 Site attendance

12.7.1 The Supplier shall attend the Site(s) for fault diagnostics if required, as part of a reactive maintenance visit. The Supplier is advised that remote access via wireless or hard-wired remote communication access is not currently permitted, however this may be permitted at some point over the term of this Contract. Pricing details of reactive maintenance visits are included within Schedule 3 (Charges).

## 12.8 Asset Register

12.8.1 The Supplier shall maintain an electronic asset register of Goods supplied to the Buyer which shall include, but not be limited to the following information (“the Asset Register”):

- (a) Date of purchase
- (b) PO associated with order
- (c) Model purchased and date of purchase
- (d) Commissioning Report including Goods settings and dose readings.
- (e) Software version for each unit.
- (f) PPM Service record of planned and undertaken visits .
- (g) Warranty record.
- (h) Repair records (if carried out by the Supplier), to include as a minimum all information required to report on Schedule 10, Service Levels To include, but not limited to:
  - Date of initial notification of repair
  - Time to first visit
  - Time to completed job
  - Details of parts required
  - Details of nature of breakdown and repair work undertaken.
  - First time fix (percentage of jobs)

12.8.2 The Supplier shall make available the full Asset Register to the Buyer at any time, free of charge, within 48 hours of request for the term of this contract.

## TECHNICAL & CUSTOMER SUPPORT

### 12.9 Customer support

12.9.1 The Supplier shall provide Contract Management support to the Buyer and Participating Authority Contract Manager(s) as a means of managing the Contract and Order.

12.9.2 The Supplier shall provide frontline technical support via a UK telephone number and email support in English language direct to the end users free of charge between Monday - Friday GMT 9am to 5pm GMT to allow the following Services:

- Expedite orders.
- Report delivery discrepancies.
- Report faulty or damaged goods.
- Request delivery proof of delivery.
- Arrange service, engineers visit, warranty claim(s).
- Technical advice for Goods operation or issue.

## 13 USED GOODS DISPOSAL, SALE, TRADE IN

### 13.1 Goods Decommissioning

16.1.1 The Supplier must provide a decommissioning service for the safe removal and disposal of the Goods when the Buyer requests it and has a duty to contact the Buyer prior to the end of life of the equipment to arrange this as necessary.

### 13.2 Unserviceable Goods Disposal

13.2.1 The Supplier may be required upon request by the Buyer to dispose of unserviceable Goods in line with waste regulations, in cases where there is no residual value to the Goods.

13.2.2 Where there is a residual scrap value, this must be offset against any agreed disposal costs and any difference returned to the Buyer through a service credit note or offset against any purchase price of new Goods and detailed as such in a quotation.

### 13.3 Serviceable Goods Disposal

13.3.1 Where Goods are serviceable and an attributable market or open competition value can be established via independent trade bodies or open tender, then a sale or trade-in may be agreed, where Goods are sold as seen and monies must be paid prior to collection or deducted from any new Goods cost. These trade-in credits are to be clearly identified on any quotation and invoice submission.

13.3.2 Any revenue generated by the sale of Goods shall be returned to the asset owner at the time of the sale transaction.

13.3.3 Suppliers shall pay market value for any Goods purchased. Any agreed disposal costs are detailed within Schedule 3 (Charges).

### 14. Optional Services

14.1 The Buyer may, due to premise access restrictions, security or other operational restrictions require that the supplier is able to provide under the same contractual terms, different size x-ray baggage scanners. Any equipment supplied must operate to at least the same standards of the equipment provided for under the contract. The suppliers will for market intelligence purposes and purely budgetary reasons provide costs of machines 1 size up and 1 size down from the contracted 40x60 machines. Suppliers will complete the additional pricing tab in the Finance Response Template. Note the costings for alternative size machines are purely for budgetary and market intelligence and will not form part of any evaluation criteria.

**Appendix D:  
Lead Times (Unit Lead Times)**

**Unit Lead Times**

Lead time measurement to commence when a valid purchase order is issued to the Supplier by the Authority (see below for details where multiple orders are placed in close succession). Lead time measurement ends when the last of a batch is delivered and installed

X-Ray Unit Lead Times (subject to Stock Replenishment production Lead Times, where appropriate, as detailed below)	Lead Times to Delivery & Installation
1 Unit	4 Working Days
2 - 5	4 Working Days
6 -10	8 Working Days
11 - 20	28 Working Days
21 - 30	84 Working Days *
31 - 50	84 Working Days *
Initial batch of 84	12 Weeks (60 working Days)

\*(21–30) and (31-50) Units Lead Times:

The Supplier shall agree with the Authority, a lead time for these batches which is as short as possible, both parties acting reasonably, however in any event the lead time shall be no greater than 84 working days.

Stock Replenishment

All Lead Times, where appropriate, are subject to Stock Replenishment production lead times where multiple orders are placed in close succession. When multiple orders are placed in close succession by the Authority, production lead times, as detailed below and within the Technical Question 1.10.7 response shall be added to the lead times stated above (to allow stock replenishment), to include, but not limited to the examples noted below.

Please note that, as detailed within the tender response to Technical Question 1.10.7 (ASSURANCE OF SUPPLY (EQUIPMENT LEAD-TIMES AND PROCESSES FOR FURTHER ORDERS DURING THE TERM OF THE CONTRACT)), as inserted below, that there is an agreed minimum stock-holding level for completed Units of 10 Units to be held within the VMI factory in Brazil and an additional 10 Units to be held within the UK (Reading). This document contains details of stock re-ordering thresholds.

Example: Following any initial order of 20 Units (which shall be delivered within the Lead

Times stated above), a new order for production of Units to replenish both the Brazilian and UK stock levels will be placed. The maximum production time for a batch of up to 20 Units is a period of 4 weeks (20 Working Days).

In summary, should an order of 20 Units be submitted by the Authority within a 28-day period following a previous order of 20 Units, the Lead Time for the second or any subsequent order shall be a period of 20 Working Days (for production), plus 8 working days for delivery and installation (total of 28 working days Lead Time). Each order of 20 units shall run consecutively after the previous order, and not concurrently, as each order of 20 Units shall require a 4-week production Lead Time with each production run commencing after the previous production run is completed.

For clarity, the Lead Time for an order of 20 Units placed within 28 Working Days of a previous order for 20 Units, shall commence after the previous order's Lead Time period of 28 Working Days has been concluded.

The Supplier's response to tender Technical Question 1.10.7 shall form a binding part of this Agreement, as inserted below:

[REDACTED]

## Appendix E: Spare Parts Minimum UK Stock Holding Levels and Lead Times

### 1. Minimum Stock Holding Levels

Minimum spare parts levels of UK stock holding, at the commencement of the Services, shall be held as detailed within section 6.1.6 above. The level of opening stock to be held in the UK will be a reasonable estimate of parts usage to ensure that all of the first batch of Units purchased (estimated at 84 units) can be serviced and maintained during their first 12 months of operation.

Based on the above, the agreed opening Minimum Stock Holding Level is listed below. The Supplier shall ensure that a pro-rata amount of stock is held at any point in time during the initial roll-out period to reflect the volume of Units increasing over time during the roll-out period.

[REDACTED]

### 2. Spare Parts Lead Times / Replenishment

UK stock levels shall be maintained by the Supplier at all times at the levels as detailed within section 6.1.6 above, with the first 12 months levels as detailed within this Appendix E.

When Spare Parts are used from the UK stock holding, they shall be replenished by the supplier within 10 Working Days of usage to ensure stock levels are maintained at the agreed levels. The Supplier shall ensure sufficient stock holding is set aside within head office or other locations, with transport and logistic solutions in place, as required to allow the replenishment of parts within the 10 Working Day lead time.

Head office or other location minimum stock holding levels (for Buyer purposes) to be inserted here, at agreed levels to ensure the delivery of the 10 Working Day replenishment lead time as detailed above.

VMI Spare parts stockholding at commencement of contract (Start Date), to be located in Brazil or any other location. This stock is to be used for replenishing UK Stockholding as held by the UK Sub-Contractor.

[REDACTED]

## Schedule 3 (Charges) [REDACTED]

### 5. INVOICING COMPLIANCE

- 5.1 The Supplier shall ensure each invoice contains at minimum each of the following (and no invoice which does not contain each of the following shall be considered valid):
- 5.1.1 a unique identification number (invoice number);
  - 5.1.2 the Supplier's name, address and contact information;
  - 5.1.3 the name and address of the department/agency in the Buyer with which the Supplier is working;
  - 5.1.4 a clear description of the services, or goods being invoiced for;
  - 5.1.5 the date the goods or service were provided;
  - 5.1.6 the date of the invoice;
  - 5.1.7 the full price and the applicable Volume Discount (as defined in Paragraph 8 below) if any;
  - 5.1.8 the amount being charged;
  - 5.1.9 any deductions against Supplier profit due to application of Service Credits in accordance with Schedule 10 (Service Levels);
  - 5.1.10 VAT amount if applicable;
  - 5.1.11 the total amount owed;
  - 5.1.12 the correct purchase order number as supplied by the Buyer;
  - 5.1.13 reference number of any Variation which sets out approved additional and/or exceptional; and
  - 5.1.14 the amount of the invoice in British Pounds sterling or any other currency which is approved by the Buyer from time to time.
- 5.2 The Supplier shall submit each invoice electronically to the nominated e-mail address as provided by the Buyer and shall ensure all electronic communications containing any invoice(s) adhere to the following requirements:
- 5.2.1 each email size must not exceed 4mb;

- 5.2.2 no more than one invoice may be contained in any single file attachment (PDF), (for the avoidance of doubt, multiple invoices may be attached as separate files); and
- 5.2.3 any supporting information (including but not limited to backing data) must be contained within the invoice PDF file.
- 5.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. The Supplier shall, if so requested by the Authority, provide to the Authority such information as may reasonably be required by the Authority as to the amount of Value Added Tax chargeable on the value of the Services and payable by the Authority to the Supplier in addition to the Charges.
- 5.4 Any overpayments by the Buyer to the Supplier shall be a sum of money recoverable from the Supplier by the Buyer for the purposes of and in accordance with the Contract, and the Supplier shall promptly notify the Buyer of any overpayments by the Buyer.
- 5.5 Unless otherwise agreed between the Buyer and the Supplier or stated in the Buyer Contract, payment will be made by Bankers Automated Clearing Service (BACS) or by such a method as the Parties shall agree in writing.
- 5.6 Disputed invoices not resolved within 20 Working Days shall be referred for determination in accordance with the Dispute Resolution Procedure.
- 5.7 Unless otherwise Approved, invoices must:
  - 5.7.1 not contain any lines for items which are not on the purchase order submitted by the Buyer to the Supplier; and
  - 5.7.2 replicate, as far as possible, the structure of and the information contained in the Purchase Order Number in respect of the number of lines, line descriptions, price and quantity.
- 5.8 If required by the Authority, the Supplier shall promptly on request:
  - 5.8.1 register and comply with any reasonable e-Marketplace solution adopted for invoicing and procurement catalogues by the Authority; and
  - 5.8.2 submit a structured electronic invoice in an Electronic Data Interchange or XML formats.,  
and compliance with this Paragraph 5.8 shall not relieve the Supplier of its obligations to invoice in accordance with the rest of this Paragraph 5.

## 6. FINAL TOTAL MONTHLY CHARGES

The final Charges in respect of all Services provided by the Supplier in the Month immediately prior to the termination or expiry of the Contract shall not be invoiced by the Supplier to the Buyer until the Supplier has produced and the Buyer has agreed the final Monthly Service Report in respect of the performance in the final Month.

## 7. NO MINIMUM VOLUME PURCHASES

7.1 The Buyer shall be under no obligation to purchase any of the Goods and/or Services during the Contract Period. If the Buyer wishes to purchase the Goods and/or Services during the Contract Period, the Parties shall follow the process set out in Paragraph 11 (Placement of Orders) of Schedule 2 (Specification).

## 8. VOLUME DISCOUNTS

8.1 The Supplier shall offer to the Buyer volume purchase discounts at the rates set out in Annex 1 below (“Volume Discount”). Where the Buyer raises a purchase order to purchase Units, the Supplier shall apply the applicable Volume Discount to the Charges and shall invoice the Buyer at the discounted rate.

8.2 Supplier will produce a report as and when requested by the buyer that details the savings made by the application of Volume Discounts.

8.3 If at any time the Supplier and/or Buyer becomes aware that the Supplier has failed to apply the Volume Discount correctly and the Buyer has been overcharged, the Supplier shall provide a credit against next invoice or if this relates to final purchase order the supplier will provide a direct refund.

## 9. INTERNATIONAL TRADE TARIFFS

All prices under this Contract are inclusive of all duties, tariffs, and other costs associated with the supply and delivery of the Goods and/or Services. The Supplier shall not be entitled during the Contract Period to increase its pricing in response to, and/or to include any increasing costs which apply (or may apply) as a result of or due to any duties and/or tariffs.

## 10. EXPENSES

The Supplier shall be entitled to recover reimbursable expenses where / if applicable, in accordance with the Travel and Subsistence Policy set out in Annex 3 to this Schedule. Where Travel and Subsistence costs are included within the pricing of Goods and Services, this is detailed within this Schedule 3 (Charges), Schedule 2 (Specification), or any other relevant contract documentation section.

## 11. FAULT RATES

### 11.1 Forecast Unit Fault Rate

The forecast frequency of expected break down / failure of units, shown as an annual percentage (the Forecast Unit Fault Rate) is provided within Appendix 2 to Annex 2 of this Schedule 3 (Charges), providing the Forecast Unit Fault Rate per year (years 1-10 / by age) to provide such information for the duration of the 10 year life expectancy of the Units.

Example:

Number of Units at risk (operational within the Buyer’s estate):	100
Number of recorded fault incidents with the annual period:	5
Forecast Unit Fault Rate (for year in question):	5%

### 11.2 Unit Fault Rate Variance Report – Reporting and Obligation

A Forecast Unit Fault Rate Variance Report shall be provided annually no later than 30-days following the contact commencement date anniversary, to detail the volume of units at risk per month, by age, with recorded fault incidents noted by month. An annual average Unit Fault Rate (by age) shall be provided.

A variance between the reported annual Unit Fault Rate and the Forecast Unit Fault Rate (as detailed within Appendix 2, Annex 2) for the year in question shall be provided (separated by age as required).

Where the Unit Fault Rate Variance as noted above is greater than 10 percentage points (see example below), the Supplier shall provide a cost comparison summary to compare actual repair costs for the period to the repair costs which would have prevailed should the Forecast Unit Fault Rate been delivered. Details of the report shall be discussed and agreed with the Buyer within 30 days of the issue of the report, with both parties acting reasonably. The Supplier shall reimburse the Buyer for the increased cost variance value within 30 days of the report being agreed by way of issuing a credit note or by financial reimbursement with such method to be instructed by the Buyer.

Example:

Forecast Unit Fault Rate (average by age segment):	5% Actual /
reported Unit Fault Rate (average by age segment):	6%
Reported Percentage Difference:	1% point
Percentage Variance $((6-5)/5 \times 100)\%$	20% Variance

### 11.3 Forecast Parts Fault Rates

The frequency of expected break down / failure of individual spare parts, shown as an annual percentage (the Forecast Parts Fault Rates) is provided within Appendix 3 to Annex 2 of this Schedule 3 (Charges), providing the Parts Fault Rates per year (years 1-10 / by age) to provide such information for the duration of the 10 year life expectancy of the Units.

This information is provided for information purposes.

Example:

Number of Units at risk (operational within the Buyer’s estate):	100
Number of recorded fault incidents for a particular part within the annual period:	3
Part Fault Rate:	3%

Annex 1: Rates and Prices – Purchase of New Equipment (all prices exclusive of VAT)

[REDACTED]

Volume Discounts

[REDACTED]

Annex 2: Rates and Prices – Purchase of Servicing and Maintenance Services and Product Decommissioning, including Unit and Parts Fault Rates. (All prices Exclusive of VAT)

Servicing and Maintenance option package pricing are listed within this Annex 2. The Buyer shall choose the required level of service and maintenance packages on a yearly basis, providing 30 days' notice prior to the start of the following 12-month period. A Purchase Order will be raised on an annual basis as required.

Service (PPM) Costs within Warranty Period:

There will be no charge for servicing / PPM costs during the Unit warranty period. Servicing / PPM visits will be undertaken twice annually during the Unit warranty period at no cost to the Authority.

[REDACTED]

1. Additional PPM Visits

[REDACTED]

2. Parts Charges

- 6.1 A full list of all parts required to ensure all planned and reactive maintenance requirements are met are listed as Appendix 1 to this Schedule 3, including pricing details.

[REDACTED]

3. Goods Decommissioning

[REDACTED]

4. Escrow Charges

[REDACTED]

Appendix 1 to Annex 2

Parts Listing and Charges (as at date of commencement of this Contract) .

[REDACTED]

Appendix 2 to Annex 2

Forecast Unit Fault Rates (per annum for units aged 1 – 10 years) , in line with the requirements as detailed within Section 11 (Fault Rates).

[REDACTED]

Appendix 3 to Annex 2

Forecast Parts Fault Rates (per annum for units aged 1 – 10 years), in line with the requirements as detailed within Section 11 (Fault Rates).

[REDACTED]

ANNEX 3: Travel and Subsistence Policy

Travel and Subsistence policy is attached on the e-portal attachments package.

**Schedule 4 (Tender) The Supplier's Tender Response, as per Core Terms Section 3.1.1**

[REDACTED]



## Schedule 5 (Commercially Sensitive Information)

1. What is the Commercially Sensitive Information?
  - 1.1 In this Schedule 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 and the EIRs.
  - 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
  - 1.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

[REDACTED]

## Schedule 6 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval 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 Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.
- 1.5 From time to time the Buyer may at its discretion request the Supplier to provide a summary report (“Report Request”) setting out information in respect of FOIA, with details of the specific requirements to be provided at the time of the request. The Report Request shall contain instructions as to the specific information required by the Buyer. The Supplier shall provide such reports in promptly (and in any event no later than the deadline stipulated within the request) and in compliance with the Report Request and this Schedule 6.



## Annex A: List of Transparency Reports

Title	Content	Format	Frequency
FOI reports	any information which is required in accordance with the provisions of the FOIA, which shall be determined by the Buyer. Specific requirements shall be set out in the Report Request.	Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which the Buyer shall issue to the Supplier.	As notified by the Buyer to the Supplier from time to time.

Implementation Reports				
Management Report Title	Report Description	Frequency of Report	Format of Report	Audience

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Units (X Ray Baggage Scanner) Go Live Report	<p>Progress report of implementation of Units and their readiness for go live. The report should provide detail of any anticipated issues, resolution plans and timescales.</p> <p>The report should include (but not be limited to):</p> <ul style="list-style-type: none"> <li>• Total number of Units that are operational</li> <li>• Any changes to the agreed Implementation Plan</li> <li>• Milestones successfully met in accordance with the Implementation Plan, and Milestones missed. <input type="checkbox"/> Spares availability</li> </ul>	Monthly	Excel	Contract Review Board
	<input type="checkbox"/> Buyer personnel user training			
Implementation Budget	Finance report detailing the conformance to the agreed budget forecast for the implementation period			

Finance reports				
Management Report Title	Report Description	Frequency of Report	Format of Report	Audience

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Contract Amendment Report	This report should detail the reasons any variation impact including monetary valuation, and confirmation of agreement between both parties.	Within 1 month of a Variation being agreed between the Supplier and the Buyer	Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer	Contract Review Board
Annual Contract Report	This is the annual performance and financial management report which summaries all the transparency reports into a consolidated high level report. This report will provide an overview of the previous 12 months performance. It will capture and detail the implementation performance as well as the operational (BAU) performance of both equipment and support services provided by supplier	Within 1 month of the end of the Contract Year to which that report relates	Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer	

Performance Reports

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Management Report Title	Report Description	Frequency of Report	Format of Report	Audience
KPI Monitoring	A monthly performance report which details (on a rolling basis): <ul style="list-style-type: none"> <li>• Performance against KPIs (for the avoidance of doubt includes Implementation and BAU KPIs)</li> <li>• Service Credits for the period (if applicable)</li> <li>• Year on year comparison</li> <li>• Backing data should be provided in electronic format.</li> <li>• YTD dashboard( format to be agreed)</li> <li>• YTD overall performance against BAU KPIs</li> <li>• Fault Rate Reporting</li> </ul>	Monthly	This will form part of the Contract Review Meeting (monthly) and should be presented in such a way to allow open discussion at the meeting. All backing data should be provided where available using tables / graphs illustrating performance, where appropriate which allows for easily extract of specific data	Contract Review Board
Health and Safety	A report detailing any accidents and injuries incurred within the workshops including (but not limited to) Lost time injury rate Work days lost from injury			
	Hazard reports			
Security Incidents and Risks	A report providing an overview and summary of any risks, security or health and safety incidents for the reporting period and YTD tracking.			

General Management Reports ( includes for Cabinet Office reporting requirements)

Management Report Title	Report Description	Frequency of Report	Format of Report	Audience
Sustainability Impact	<ul style="list-style-type: none"> <li>• the key sustainability impacts identified by the Supplier and as detailed online at; <a href="https://www.gov.uk/guidance/measuringand-reporting-environmental-impactsguidance-for-businesses">https://www.gov.uk/guidance/measuringand-reporting-environmental-impactsguidance-for-businesses</a> and in accordance with PPN 6/20 and 6/21;</li> <li>• sustainability improvements made;</li> <li>• actions underway or planned to reduce sustainability impacts;</li> <li>• sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier's operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements.</li> </ul>	Annually	.This will form part of the Contract Review Meeting (annual) and should be presented in such a way to allow open discussion at the meeting. All backing data should be provided where available using tables / graphs illustrating performance, where appropriate	Contract Review Board

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			which allows for easily extract of specific data. The Buyer shall be entitled to require text versions of any presentation and/or supplementary documents to support the presentation	
Waste permits	Copies of any relevant permits and exemptions for waste, handling, storage and disposal	Annually	Copy of Waste Certification	Contract Review Board
Greenhouse Gas Emissions	Report should set out the Supplier's greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at <a href="https://www.gov.uk/guidance/measuring-andreporting-environmental-impacts-guidance-forbusinesses">https://www.gov.uk/guidance/measuring-andreporting-environmental-impacts-guidance-forbusinesses</a>	Annually	To be presented in a format that allows for ease of understanding and discussion	Contract Review Board
Energy Use ( by Unit if metering is available)	Separate energy consumption figures for: assets deployed on the Serviced Sites(s);	Annually	To be presented in a format that allows for ease of understanding and discussion	Contract Review Board

Schedule 6 (Transparency Reports)  
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Transport Use	<input type="checkbox"/> miles travelled by transport and fuel type, for Units and goods delivered to the Serviced Sites	Annually	To be presented in a format that allows for ease of	Contract Review Board
	<input type="checkbox"/> miles travelled by Supplier Staff when visiting the Serviced Sites sites from the Supplier's Sites; and <input type="checkbox"/> resulting Green House Gas (GHG) emissions using agreed Conversion Factors.		understanding and discussion	

## Schedule 7 (Staff Transfer)

### 1. Definitions

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

- "Employee Liability" 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 Buyer 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 and also including any payments arising in respect of pensions;
  - f) claims whether in tort, contract or statute or otherwise;
- 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;

"Former Supplier"	a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Subcontractor of such supplier (or any Sub-contractor of any such Sub-contractor);
"Partial Termination"	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When the Buyer can end this contract ) or 10.6 (When the Supplier can end the contract);
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D: Pensions, shall include the Start Date, where appropriate;
"Supplier's Final Supplier Personnel List"	a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Personnel List"	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
"Staffing Information"	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:</p> <ul style="list-style-type: none"><li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li><li>(b) details of whether they are employed, selfemployed contractors or consultants, agency workers or otherwise;</li></ul> <p>the identity of the employer or relevant contracting Party;</p>

- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Term"

the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;

"Transferring Buyer Employees"

those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

"Transferring Former Supplier Employees"

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

## 2. INTERPRETATION

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be and where the Sub-contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Contract:

- o Part C (No Staff Transfer On Start Date); and
- o Part E (Staff Transfer on Exit)

## 1. Part A: Staff Transfer at the Start Date (Not Used in this contract) 2. Outsourcing from the Buyer

1. What is a relevant transfer
  - 1.1 The Buyer and the Supplier agree that:
    - 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
    - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any SubContractor and each such Transferring Buyer Employee.
    - 1.1.3 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.
2. Indemnities the Buyer must give
  - 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date.
  - 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
  - 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then -
    - 2.3.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
    - 2.3.2 the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
    - 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

2.4.2 (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Sub-contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3. Indemnities the Supplier must give and its obligations

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and any other sums due under Part D: Pensions.

4. Information the Supplier must provide

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Cabinet Office requirements

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. Pensions

6.1 The Supplier shall comply with:

6.1.1 all statutory pension obligations in respect of all Transferring Buyer Employees; and

6.1.2 the provisions in Part D: Pensions.

**3. Part B: Staff transfer at the Start Date (Not Used in this contract) 4. Transfer from a former Supplier on Reprocurement**

1. What is a relevant transfer

1.1 The Buyer and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disappplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as

if originally made between the Supplier and/or any Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

2. Indemnities given by the Former Supplier

2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.

2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Subcontractor pursuant to the Employment Regulations then:

2.3.1 the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;

2.3.2 the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;

2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

1. and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

- 2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Sub-contractor; or
    - 2.4.2 that the termination of employment was unfair because the Supplier and/or Sub-contractor neglected to follow a fair dismissal procedure.
  - 2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.
  - 2.6 If the Supplier and/or any Sub-contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.
3. Indemnities the Supplier must give and its obligations
  - 3.1 Subject to Paragraph 3.1, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.
  - 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
  - 3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part D: Pensions.
4. Information the Supplier must give

The Supplier shall promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
5. Cabinet Office requirements

5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## 6. Limits on the Former Supplier's obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## 7. Pensions

7.1 The Supplier shall comply with:

7.1.1 all statutory pension obligations in respect of all Transferring Former Supplier Employees; and

7.1.2 the provisions in Part D: Pensions.

## Part C: No Staff Transfer on the Start Date

1. What happens if there is a staff transfer
  - 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
  - 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
    - 1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
    - 1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
    - 1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
    - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:
    - (a) the Buyer will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and
    - (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
  - 1.3 The indemnities in Paragraph 1.2 shall not apply to any claim:
    - 1.3.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or
    - 1.3.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure

- 1.4 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Start Date.
- 1.5 If the Supplier and/or the Sub-contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
2. Limits on the Former Supplier's obligations

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## 5. Part D: Pensions

### 1. Definitions

In this Part D, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

- "Actuary" a Fellow of the Institute and Faculty of Actuaries;
- "Admission Agreement" means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
- "Broadly Comparable"
- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
  - (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department, and "Broad Comparability" shall be construed accordingly;
- "CSPS" the schemes as defined in Annex D1 to this Part D;
- "Fair Deal Employees" those:
- (a) Transferring Buyer Employees; and/or
  - (b) Transferring Former Supplier Employees; and/or
  - (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C;

(d) where the Former Supplier becomes the Supplier those employees;

who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;

"Fair Deal means the relevant Statutory Scheme or a Broadly Schemes" Comparable pension scheme;

"Fund Actuary" means Fund Actuary as defined in Annex D3 to this Part D;

"LGPS" the schemes as defined in Annex D3 to this Part D;

"NHSPS" the schemes as defined in Annex D2 to this Part D;

"New Fair Deal" the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for Staff Pensions: Staff Transfer from Central Government" issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and

"Statutory means the CSPA, NHSPS or LGPS. Schemes"

## 2. Supplier obligations to participate in the pension schemes

2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

2.3 The Supplier undertakes:

2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

2.3.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

3. Supplier obligation to provide information

3.1 The Supplier undertakes to the Buyer:

- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed).

4. Indemnities the Supplier must give

4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.

4.2 The Supplier hereby indemnifies the NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Sub-contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

- 4.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
  - 4.2.2 arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
- 4.3 The indemnities in this Part D and its Annexes:
- 4.3.1 shall survive termination of this Contract; and
  - 4.3.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

5. What happens if there is a dispute

5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Buyer and the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and the Supplier be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
  - 5.1.2 whose decision will be final and binding on the Buyer and the Supplier;  
and
  - 5.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and  
the Supplier unless the independent Actuary shall otherwise direct.
6. Other people's rights
- 6.1 The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the CRTPA.
7. What happens if there is a breach of this Part D
- 7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
- 7.1.1 commits an irremediable breach of any provision or obligation it has  
under this Part D; or
  - 7.1.2 commits a breach of any provision or obligation it has under this Part D  
which, where capable of remedy, it fails to remedy within a reasonable  
time and in any event within 28 days of the date of a notice from the  
Buyer giving particulars of the breach and requiring the Supplier to  
remedy it.
8. Transferring New Fair Deal Employees
- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Sub-Contractor shall:
- 8.1.1 consult with and inform those Fair Deal Employees of the pension  
provisions relating to that transfer; and
  - 8.1.2 procure that the employer to which the Fair Deal Employees are  
transferred (the "New Employer") complies with the provisions of  
this Part D and its Annexes provided that references to the "Supplier" will  
become references to the New Employer, references to "Relevant  
Transfer Date" will become references to the date of the transfer to the  
New Employer and references to "Fair Deal Employees" will become  
references to the Fair Deal Employees so transferred to the New  
Employer.
9. What happens to pensions if this Contract ends

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract. 10. Broadly Comparable Pension Schemes

10.1 If either:

- 10.1.1 the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or
- 10.1.2 the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Subcontractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Sub-contractors shall):

- 10.2.1 supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
- 10.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 10.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 10.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is terminated;

- 10.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("Shortfall"), the Supplier or the Sub-contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier; and
- 10.2.6 indemnify the Buyer and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

## Annex D1:

### Civil Service Pensions Schemes (CSPS)

#### 1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"CSPS Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
"CSPS Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
"CSPS"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; (after 30 September 2018: the Designated Stakeholder Pension Scheme which is scheduled to close to new members in September 2018] and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014).

#### 2. Access to equivalent pension schemes after transfer

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the CSPA for whatever reason at a time when it has CSPA Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPA Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPA on the date the CSPA Eligible Employees ceased to participate in the CSPA.

## Annex D2: NHS Pension Schemes

### 1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

- "Direction Letter"            an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Eligible Employees;
- "NHSPS Eligible Employees"    each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:
- (a)            their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or

- (b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;

"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;

"NHS Pension Scheme Arrears"	any failure on the part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
"NHS Premature Retirement Rights"	rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
"Pension Benefits"	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and

"Retirement a pension scheme registered under Chapter 2 of Benefits Part 4 of the Finance Act 2004. Scheme"

2. Membership of the NHS Pension Scheme
  - 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

- 2.2 The Supplier must supply to the Buyer by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.4 The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.6 The Supplier will (and will procure that its Sub-contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-contractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.
3. Access to NHS Pension Schemes after transfer

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

4. Continuation of early retirement rights after transfer

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

5. What the buyer do if the Supplier breaches its pension obligations
  - 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Sub-contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter.
  - 5.2 If the Buyer is entitled to terminate the Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension

- scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-contractors.
- 5.3 In addition to the Buyer's right to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.
6. Compensation when pension scheme access can't be provided
- 6.1 If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
- 6.1.1 membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
  - 6.1.2 access to a Broadly Comparable pension scheme,
- the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-contractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.
- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.
7. Indemnities that a Supplier must give
- 7.1 The Supplier must indemnify and keep indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 7.2 The Supplier must indemnify and keep indemnified the Buyer, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.
8. Sub-Contractors
- 8.1 If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
- 8.1.1 if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible

for ensuring that the Buyer receives a complete copy of each such Sub-contractor direction letter as soon as reasonably practicable; or

8.1.2 if, in accordance with Paragraph 4 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Buyer) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 10 below (Bulk Transfer Obligations in relation to any Broadly Comparable Scheme) shall apply.

8.2 The Supplier shall procure that each Sub-contractor provides indemnities to the Buyer, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-contractor that are identical to the indemnities set out in Paragraph 7 of this Annex B. Where a Sub-contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

## Annex D3:

### Local Government Pension Schemes (LGPS)

#### 1. Definitions

1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Administering Authority"	Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	[insert name], a pension fund within the LGPS;
"LGPS"	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2. Supplier must become a LGPS admission body

- 2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
- 2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.
3. Right of set-off

The Buyer shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

4. Supplier ceases to be an LGPS Admission Body

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

5. Discretionary benefits

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

## Annex D4: Other Schemes

[Placeholder for Pension Schemes other than LGPS, CSPS & NHSPS]

## Part E: Staff Transfer on Exit

### 1. Obligations before a Staff Transfer

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
  - 1.1.3 the date which is 12 Months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):

not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which

were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.1 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.2 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.3 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.4 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
- 1.5.5 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.6 give the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.7 co-operate with the Buyer 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, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.8 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.9 not for a period of 12 Months from the Service Transfer Date reemploy or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.10 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;

- 1.5.11 fully fund any Broadly Comparable pension schemes set up by the Supplier;
  - 1.5.12 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
  - 1.5.13 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
  - 1.5.14 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;

- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. Staff Transfer when the contract ends

2.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date.

2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations then.

2.5.1 the Replacement Supplier and/or Replacement Sub-contractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement

Supplier and/or Replacement Sub-contractor;

- 2.5.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-contractor shall immediately release the person from its employment;
  - 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-contractor may within 5 Working Days give notice to terminate the employment of such person;
1. and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.
- 2.6 The indemnity in Paragraph 2.5 shall not apply to:
    - 2.6.1 (a) any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, or
    - 2.6.2 (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.
  - 2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
  - 2.8 If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
  - 2.9 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
  - 2.10 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee or any

appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

2.11 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).





## Schedule 8 (Implementation Plan and Testing) Part A - Implementation

### 1. Definitions

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

"Delay"	a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Deliverable Item"	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
"Milestone Payment"	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;
"Implementation Period"	has the meaning given to it in Paragraph 7.1;

### 2. Agreeing and following the Implementation Plan

2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan within 10 Working Days, if requested to do so by the Buyer.

2.2 The draft Implementation Plan shall:

2.2.1 contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require, including but not limited to:

- (a) Key dates associated with the availability of Goods, components, software tooling;
- (b) Survey details;
- (c) Delivery;
- (d) Installation;
- (e) Commissioning;
- (f) Training;

(g) Acceptance testing and handover;

- 2.3 take account of all dependencies known to, and/or which should reasonably be known to, the Supplier.
  - 2.4 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
  - 2.5 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
  - 2.6 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.
3. Reviewing and changing the Implementation Plan
- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
  - 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
  - 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
  - 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a material Default.
4. Security requirements before the Start Date
- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Implementation Plan.
  - 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
  - 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
  - 4.4 The Supplier shall provide the names of all Supplier Staff and

Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.

- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

## 5. What to do if there is a Delay

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
  - 5.2 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
  - 5.3 include in its notification an explanation of the actual or anticipated impact of the Delay;
  - 5.4 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
  - 5.5 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

## 6. Compensation for a Delay

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:
  - 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;
  - 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
    - (a) the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (When the Buyer can end this contract); or

- (b) the delay exceeds the number of days (the "Delay Period Limit") specified in the Implementation Plan commencing on the relevant Milestone Date;
- 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
- 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
- 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 11 (How much you can be held responsible for).

## 7. Implementation Plan

- 7.1 The Implementation Period will be as agreed within the Implementation Plan.
- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer. The Supplier's full service obligations shall formally be assumed on the Start Date as set out in Award Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:
  - 7.3.1 work cooperatively and in partnership with the Buyer and incumbent supplier, where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
  - 7.3.2 work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
  - 7.3.3 liaise with the incumbent Supplier to enable the full completion of the Implementation Period activities; and
  - 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 7.4 The Implementation Plan will include detail stating:
  - 7.4.1 how the Supplier will work with the incumbent Supplier and the Buyer Authorised Representative to capture and load up information such as asset data ; and
  - 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.
- 7.5 In addition, the Supplier shall:

- 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
- 7.5.2 mobilise all the Services specified in the Specification within the Contract;
- 7.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
  - (a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and
  - (b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 7.5.4 manage and report progress against the Implementation Plan;
- 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent provider and the Supplier.]

## 8. Commissioning

- 8.1 The Supplier shall be responsible for fully commissioning the Goods to ensure that each Unit is fully operational (in compliance with Schedule 2 (Specification) Appendix A The Technical Goods Specification and effective to the levels set out in Appendix B The Technical Performance Specification) and tested to meet health & safety requirements without fault and, where required, set up for the Goods' intended use prior to formal handover to the Buyer.
- 8.2 The Supplier shall produce a Commissioning Report that shall include dose radiation readings. A copy of the Commissioning Report shall be provided to

the individual Serviced Site and a copy sent to a nominated Buyer personnel or a Buyer central, shared email address for retention and audit purposes.

- 8.3 The Supplier shall carry out radiation measurements as part of their attendance to site to ensure that equipment is operating in compliance with the Ionising Regulations.
- 8.4 Where commissioning tests are carried out, the shall upon request report to the Buyer the specification of the dosimeter used and provide a description of the testing process for environmental measurements. The Supplier shall make available to the Buyer on request the applicable Dosimeter Calibration Certificates.
- 8.5 Dose measurements on all reports shall include a table of conversions to Micro Sieverts Hour ( $\mu\text{Sv/h}$ ) and taken 5cm from the housing.

## 9. Inspection of Goods

- 9.1 The Supplier shall afford such reasonable access to its Sites as is required to allow the Buyer to inspect any part of or the finished Units, or the availability of Goods, at the Supplier's Sites or any premises where the Supplier may store or hold Goods.

## 10. Security Clearance

- 10.1 The Supplier shall ensure that the Supplier Staff responsible for installation and support complete and submit their security vetting forms at the commencement of the Contract, and present their Identification Documents in person at an agreed prison Site in England or Wales, to verify their identification, within 2 weeks of being requested to do so by the Buyer during the contract mobilisation period.

# Part A: Annex 1: Implementation Plan

This Annex contains the agreed draft Implementation Plan.

When measurement of the actual performance against the Implementation Plan is undertaken, the Supplier shall not be held accountable for delays resulting from the actions of the Authority, to include but not limited to the following:

- When the Authority is not able to accept an appointment made by the Supplier or the Supplier's representatives for a site visit to supply a Deliverable Item (Goods or Services) relating to this Implementation Plan.
- If the Authority cancels any appointment made by the Supplier or the Supplier's representatives for a site visit to supply a Deliverable Item (Goods or Services) relating to this Implementation Plan.

- If the Authority refuses access to the Supplier or the Supplier's representatives when they arrive at a site to supply a Deliverable Item (Goods or Services) relating to this Implementation Plan.

The timeline within the Implementation Plan will be adjusted as required to account for any Bank Holidays occurring during the Implementation Period and the Supplier shall not be responsible for delays resulting from the inability to work during Bank Holidays. The Supplier is not obliged to work throughout any Bank Holidays and the number of Bank Holiday days occurring during the Implementation Period will be added to the overall Implementation Plan timeline as required when performance measurement is undertaken.

A complete Implementation plan is set below, within this Part A, Annex 1 to this schedule.

[REDACTED]

## Part B - Testing

### 1. Definitions

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

"Component"	any constituent parts of the Deliverables;
"Material Test Issue"	a Test Issue of Severity Level 1 or Severity Level 2;
"Satisfaction Certificate"	a certificate materially in the form of the document contained in Annex 2 when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
"Severity Level"	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Issue Management Log"	a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
"Test Issue Threshold"	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
"Test Reports"	the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
"Test Strategy"	a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;
"Test Witness"	any person appointed by the Buyer pursuant to Paragraph 9 of this Schedule; and

"Testing Procedures"

the applicable testing procedures and Test Success Criteria set out in this Schedule.

2. How testing should work

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not submit any Deliverable for Testing:
  - 2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
  - 2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
  - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 2.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3. Planning for testing

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Start Date but in any case no later than twenty (20) Working Days after the Start 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, fail to satisfy the Test Success Criteria 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;
  - 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
  - 3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;
  - 3.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;

- 3.2.8 the technical environments required to support the Tests; and
- 3.2.9 the procedure for managing the configuration of the Test environments.

#### 4. Preparing for Testing

- 4.1 The Supplier shall develop Test Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days 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 and, for each Test, the specific Test Success Criteria to be satisfied; and
  - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

#### 5. Passing Testing

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

#### 6. How Deliverables will be tested

- 6.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
  - 6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;
  - 6.2.2 a plan to make the resources available for Testing;
  - 6.2.3 Test scripts;
  - 6.2.4 Test pre-requisites and the mechanism for measuring them; and
  - 6.2.5 expected Test results, including:
    - (a) a mechanism to be used to capture and record Test results; and
    - (b) a method to process the Test results to establish their content.

#### 7. Performing the tests

- 7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
- 7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.5 The Supplier shall provide to the Buyer in relation to each Test:
  - 7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
  - 7.5.2 the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
  - 7.6.1 an overview of the Testing conducted;
  - 7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
  - 7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
  - 7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
  - 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer 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.
- 7.9 If the Supplier successfully completes the requisite Tests, the Buyer 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 Deliverables are implemented in accordance with this Contract.

## 8. Discovering Problems

- 8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 8.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.
- 8.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## 9. Test witnessing

- 9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 9.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 9.3 The Test Witnesses:
  - 9.3.1 shall actively review the Test documentation;
  - 9.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
  - 9.3.3 shall not be involved in the execution of any Test;
  - 9.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
  - 9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
  - 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## 10. Auditing the quality of the test

- 10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "Testing Quality Audit") subject to the provisions set out in the agreed Quality Plan.
- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

#### 11. Outcome of the testing

- 11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
  - 11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
  - 11.2.2 the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
  - 11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.
- 11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:

- 11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
- 11.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
- 11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
  - 11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5); and
  - 11.9.2 where the Buyer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

## 12. Risk

- 12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
  - 12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or
  - 12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

## Annex 1: Test Issues – Severity Levels

### 1. Severity 1 Error

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

### 2. Severity 2 Error

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:

- 2.1.1 causes a Component to become unusable;

- 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or

- 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables;

### 3. Severity 3 Error

- 3.1 This is an error which:

- 3.1.1 causes a Component to become unusable;

- 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or

- 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables;

but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

### 4. Severity 4 Error

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.

### 5. Severity 5 Error

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

## Annex 2: Satisfaction Certificate

The Satisfaction Certificate will be agreed between the parties prior to the commencement of the delivery of the first Units to the Authority, both parties acting reasonably.



## Schedule 9 (Installation Works)

1. When this Schedule should be used
  - 1.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision Deliverables requiring installation by the Supplier.
2. Site Surveys and Installation Works
  - 2.1. The Supplier shall undertake a survey of all Buyer Sites where new Units must be delivered and installed to ensure that the Units can be installed in the desired location. The Supplier shall advise on any access, handling, floor loading or pre-installation requirements for each site where required or any other related issues (“Quotation Survey”).
  - 2.2. The Buyer may at its discretion request the Supplier to provide a quotation for the cost of providing Installation Works in respect of specific Units and Buyer Sites (“Quote Request”). The Buyer shall state its requirements in the Quote Request. The Supplier shall promptly upon request provide a written quote to the Buyer which sets out:
    - 2.2.1. the cost of the Installation Works in total, and with each of the:
      - (a) Goods; and
      - (b) Services, set out separately (at a component level);
    - 2.2.2. the scope of the Installation Works;
    - 2.2.3. the footprint of the Goods required for safe installation and operation;
    - 2.2.4. the applicable Lead Teams;
    - 2.2.5. a commitment to meet the Buyer’s requirements as stated in the Quote Request;
    - 2.2.6. any required actions which the Supplier requires the Buyer to perform to enable the Installation Works; and
    - 2.2.7. any assumptions which apply to the Installation Works, (“Installation Works Quote”).
  - 2.3. If the Buyer wishes to accept the Installation Works Quote it shall notify the Supplier in writing, upon which the Supplier shall be bound to provide the Installation Works according to the Buyer’s requirements and the terms set out in the Quote Request, and the Installation Works Quote (with the Quote Request taking precedence in the event of any conflict).
3. How things must be installed
  - 3.1. Where the Supplier reasonably believes, it has completed the Installation

Works it shall notify the Buyer in writing. Following receipt of such notice, the Buyer shall inspect the Installation Works and shall, by giving written notice to the Supplier:

- 3.1.1. accept the Installation Works, or
- 3.1.2. reject the Installation Works and provide reasons to the Supplier if, in the Buyer's reasonable opinion, the Installation Works do not meet the requirements set out in the Award Form (or elsewhere in this Contract).
- 3.2. If the Buyer rejects the Installation Works in accordance with Paragraph 2.1.2, the Supplier shall immediately rectify or remedy any defects and if, in the Buyer'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 Award Form (or elsewhere in this Contract), the Buyer may terminate this Contract for material Default.
- 3.3. The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Buyer in accordance with Paragraph 2.2.1 Notwithstanding the acceptance of any Installation Works in accordance with Paragraph 2.2), the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the specification in the Award Form (or elsewhere in this Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Buyer of the Installation Works.

Throughout the Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Staff to carry out the Installation Works.

#### 4 PRE-ORDER & ORDER PLACEMENT

##### 4.1 Quotation Survey

- 4.1.1 The Supplier and/or its nominated Sub-Contractor will be required to attend Buyer Sites within the UK free of charge to carry out surveys as detailed within Paragraph 2 above.
- 4.1.2 The Supplier and/or its nominated Sub-Contractor(s) shall make the Buyer Site aware (via the Buyer's nominated contact), of the footprint of the Goods, including operator zones, to ensure that the Site is fully aware of the gross total footprint needed to accommodate and operate the Goods safely..
- 4.1.3 If a Quotation Survey is requested by the Buyer, the Supplier and/or its nominated Sub-Contractor shall contact the relevant Local Point of Contact to arrange access to the Site and provide the details of the Supplier Staff to attend the Site, and any other requested information the Local Point of Contact may require. The Supplier / Sub-Contractor shall ensure that the Supplier Staff understand and comply with the security requirements

- 4.1.4 If any Quotation Survey requires Equipment or tools to be brought on Site, the Supplier and/or Sub-Contractor as applicable shall provide details including, but not limited to, a full list of the Equipment and/or tools with serial numbers, where applicable. These details shall be provided to the Local Point of Contact (or any member of the Buyer's staff who may be authorised to request this information as notified to the Supplier). The Supplier shall provide to the Buyer all requested information in full prior to conducting the Quotation Survey. The Supplier shall for authorisation for .

## 5. INSTALLATION SPECIFICS

### 5.1 Pre-Site Actions (Installations)

5.1.1 The Supplier / Sub-Contractor shall be required as part of an installation or Project Delivery process to contact a Site prior to any work being carried out following the placement of an order produce any risk assessments where requested and to arrange logistics and delivery of the installation. These cost to be included within the installation costs as included within Schedule 3 (Charges).

### 5.2 Site Conditions

5.2.1 The Supplier shall comply with local working conditions, including, but not limited to:

- (a) The need to be escorted at all times within a prison and the need to work in separate parts or areas of a prison which will necessitate escorts to be present at both locations. Careful coordination with prisons will be required to ensure that escorts are made available.
- (b) Restrictions within prison premises on the availability and use of personal communication devices (for example mobile phones, or other devices which include Bluetooth connections) and any IT Equipment (such as laptop computers) which enables wireless connection to the internet or mobile phone networks. Where this Equipment is required as part of installation or testing, authorisation for each piece of Equipment will be required in advance of the visit to ensure that use/conveyance is lawful.
- (c) Working times will be subject to local regimes and approval must be sought with consideration of prisons operational and escort staff availability, anticipated to be confirmed by the Local Point of Contact.
- (d) Typically, working hours may be limited to approximately 5 hours per day. Within these core hours, limitations will arise subject to the individual Site's regime and work times will need to remain flexible to adapt to evolving circumstances and local needs. This may result in available work hours being limited on occasion, potentially at short notice, due to operational disruption. The Supplier should be aware of and be adaptable to these conditions and check in advance with Site for any local variations.

All security details relevant to site visits are included within Schedule 36 (The Secretary of State for Prisons)

## 4.1 Installation Responsibilities

4.1.2 Supplier Responsibilities: In conjunction with the responsibilities of this Agreement, the Supplier shall:

- (a) undertake all Services associated with the installation of the Goods, in liaison with, and to the approval of, the Site including any agreed cabling within the on-Site cable route;
- (b) make good any damage or disruption to Authority Premises or assets caused by the Supplier, and for all activity associated with opening and closing of the cable routes and for leaving the route in a condition acceptable to the Authority's Project Lead and at no cost to the Authority;
- (c) ensure that any exposed cabling in reach of prisoners is contained within steel security conduit or secured covertly;
- (d) ensure that all exposed fixings for conduit are security fixings;
- (e) provide all installation materials necessary to commission the Goods.
- (f) ensure compliance with the Construction (Design and Management) Regulations (if applicable);
- (g) liaise with the Authority's nominated on-Site Project Manager, who will do all that is reasonably required by the Supplier to enable the Supplier to affect any work requirements, and will do all that is reasonably required by the Supplier to enable the Goods to be installed and the Services to be supplied;
- (h) provide the Local Point of Contact, the Authority Project Lead or their representative with daily progress updates and requirements for access for the following day.

4.1.3 Responsibilities

The Authority shall:

- (a) enable access for Supplier personnel to sites as required; and
- (b) undertake an initial survey of all sites to undertake an initial assessment of the suitability of the identified location of all new Units;

4.2 Training

4.2.1 The shall provide free of charge basic operator training in respect of controls and safe use upon delivery of the Units.

4.3 Goods Handover Documentation

4.3.1 Prior to the Supplier handing over the Goods to the Buyer, the Supplier shall provide all such documentation as the Buyer requires to allow the Buyer to manage and support the Goods, which shall include, but shall not be limited to:

- a) [Operating manuals for the Units in an electronic format written in English;
- b) Goods configuration information;
- c) test and acceptance documentation (including relevant health and safety compliance declarations); and
- d) Preventative Service Maintenance schedules and tasks including:

- i. First service level - Customer capable servicing duties;
- ii. Second service level - Third party maintainer / repair tasks and
- iii. Third service level - Original Equipment Manufacturer tasks for specialist and/or non-serviceable components.]



## Schedule 10 (Service Levels)

### 1. Definitions

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

“Completed Job” means when a Fault or repair has been rectified in full by the Supplier and the Supplier has provided to the Buyer an Engineer Job Report

“Critical Service Failure” means:

- (a) the Goods:
  - (i) do not function and/or are unusable; and/or
  - (ii) function but do not materially conform to the requirements of the Agreement; and/or
- (b) any individual(s) is/are physically harmed by using, and/or as a result of use of, the Goods;

“Fault” means any problem with a Unit that stops, or interferes with it working correctly

“First Time Fix” means that any Fault is repaired or fixed at the first visit by an engineer or any member of the Supplier Staff

“Fulfilled” means the Goods and/or Services are successfully delivered to the location required by the Buyer and are accepted.

“Monthly Service Charge”	As defined in worked example, Annex B to Part A, Section 1.6.3 below.
“Non-Critical Failure”	means any failure of, and/or problems with, the Goods that is not a Critical Service Failure
“Order Fulfilment”	means the percentage completeness of an Order upon delivery
“Ordered Goods”	means any Goods ordered by the Buyer (and/or a Serviced Site)
“Planned Preventative Maintenance (PPM) Visit Booking Date”	means the date agreed with the Site for the PPM Visit to take place) as detailed within the PPM Service Schedule
“Reactive Visit”	means a visit by Supplier Staff to a Serviced Site in to rectify a Fault and/or otherwise provide the Services which is not part of the Planned and Preventative Maintenance Schedule
“Repeat Service”	means Services provided by the Supplier to rectify a Fault and/or failure of a Unit where such Fault and/or failure has been the subject of a Reactive Visit by the Supplier.
“Requested Repair(s)”	means any request made by authorised Staff at a Serviced Site and/or or the Buyer for the Supplier to conduct a Reactive Visit to rectify a Fault
"Service Credits"	shall be as set out within Part A of this Schedule;
"Service Credit Cap"	shall be as set out within Part A of this Schedule;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level;

"Service Level Performance Measure" shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule;

"Service Level Threshold" shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule

“Serviced Site(s)” means any Buyer Site that has have one or more Unit(s) installed.

“% of Delivery Fulfilment” means the percentage of Units delivered and/or installed (as applicable)in compliance with the applicable Lead Time(s)

2. What happens if you don't meet the Service Levels?
  - 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
  - 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
  - 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
- 2.4.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or
  - 2.4.2 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;
    - (c) results in the corruption or loss of any Government Data; and/or (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
  - 2.4.3 the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 of the Core Terms (When the Buyer can end the Contract).
- 2.5 Not more than once in each Contract Year, the Buyer 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 Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
- 2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
  - 2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
  - 2.5.3 there is no change to the Service Credit Cap.

Part A: Service Levels and Service Credits

1. Service Levels

If the level of performance of the Supplier:

- 1.1 is likely to or fails to meet any Service Level Performance Measure; or
- 1.2 is likely to cause or causes a Critical Service Failure to occur,
- 1.3 the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:
  - 1.3.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure and/or Critical Service Failure from taking place or recurring;
  - 1.3.2 instruct the Supplier to comply with the Rectification Plan Process; and/or
  - 1.3.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer.

2. Service Credits

[REDACTED]

3. Repeat Failures

[REDACTED]

Annex A to Part A: Services Levels and Service Credits Table

1. Service Levels – [REDACTED]

Table 1 – Key Performance Indicators (KPI)

No.	Key Performance Indicator Title	Guidance and Description	Frequency and Scope of Measurement	Service Level Threshold	Service Credit(£) for each Service Period
A1	<p>Orders (Supply of Goods Lead Times.</p> <p>measured as a ratio of; % of Delivery Fulfilment / agreed deliverable Lead Times</p>	<p>This will be measured against the Lead Times as detailed in Schedule 2 (Specifiation), , or as otherwise agreed between the Parties.</p> <p>Time taken for an Order to be Fulfilled shall be calculated from the date and time at which the Supplier receives an Order, until the date and time at which it is Fulfilled.</p> <p>For clarity this Service Level relates to Orders for Goods and is unrelated to any Service Levels for Planned Preventative or Reactive Maintenance Visits (see below).</p>	<p>Monthly &amp; measured collectively against all Serviced Sites</p>	<p>98% of Orders made within the Service Period Fulfilled within the applicable Lead Time</p>	<p>[REDACTED]</p>

A2	New Units:  Delivery to end location & Installation:	To be measured against agreed New Equipment Delivery, Installation and Commissioning Schedule, or as otherwise agreed by the Parties.  Unit(s) delivered to the location requested by the Buyer, installed, and	Monthly & measured collectively against all Serviced Sites	98% of Orders made in in Service Period Fulfilled in compliance with the New Equipment Delivery, Installation, and Commissioning Schedule	[REDACTED]
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	measured as a ratio of; % of Delivery Fulfilment / agreed Lead Times	fully commissioned in accordance with the New Equipment Delivery, Installation and Commissioning Schedule (deliveries of individual Units and/or multiple Units as applicable).			[REDACTED]
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B	<p>Planned Preventative Maintenance (PPM) Service Schedule Compliance</p> <p>Delivered on time against agreed PPM Service Schedule timescales.</p>	<p>This Service Level shall be measured against compliance with the PPM Visit Booking Date for each PPM Visit</p>	<p>Monthly &amp; measured collectively against all Serviced Sites</p>	<p>95% of PPM Visits delivered on the relevant PPM Visit Booking Date measured within each Service Period.</p>	<p>[REDACTED]</p>
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					<p>Service Period failure measurements.</p>
C	<p>Reactive Maintenance: Call Out Attendance Lead times</p>	<p>Compliance with Lead Times to rectify Critical Failure(s) and Non-Critical Failure(s) (See C1 – C5 below).</p>	<p>(See C1 – C5 below).</p>	<p>(See C1 – C5 below).</p>	<p>(See C1 – C5 below).</p>

C1	<p>Reactive Maintenance - Critical Failure:</p> <p>Reactive Maintenance Call Out Attendance Lead times</p>	<p>Further to a pre-qualification call as detailed in Schedule 2 (Specification) and where a visit to a Serviced Site is deemed necessary by the Buyer and/or Supplier, the Supplier shall ensure a suitably qualified engineer attends the Serviced Site within 1 Working Day from the time the incident is first reported.</p>	<p>Monthly &amp; measured collectively against all Serviced Sites</p>	<p>95% of Reactive Maintenance (Critical Failure) Visits attended within 1 Working Day, measured within each Service Period</p>	<p>[REDACTED]</p>
C2	<p>Reactive Maintenance – (Non-Critical Failure)</p> <p>Call Out Attendance Lead times</p>	<p>Further to a pre-qualification call as detailed in Schedule 2 (Specification) and where a visit to a Serviced Site is deemed necessary by the Buyer and/or Supplier, the Supplier shall ensure a suitably qualified engineer attends the Serviced Site within 2 Working Days from the date the incident is first reported.</p>	<p>Monthly &amp; measured collectively against all Serviced Sites</p>	<p>95% of Reactive Maintenance (Non-Critical Failure) Visits attended within 2 Working Days, as measured within Service Period</p>	<p>[REDACTED]</p>

C3	<p>Reactive Maintenance (Critical &amp; Non-Critical Failures)–</p> <p>Repeat Service</p> <p>Percentage of jobs classed as Repeat Service.</p>	<p>Percentage of jobs classed as Repeat Service which occurs within 3 months of the previous Completed Job (or job which was considered to be a Completed Job)</p>	<p>Monthly &amp; measured collectively against all Serviced Sites</p>	<p>No more than 5% of jobs to be classed as Repeat Service, as measured within each Service Period</p>	<p>[REDACTED]</p>
C4	<p>Reactive Maintenance (Critical &amp; Non-Critical Failures) -</p> <p>First Time Fix:</p>	<p>Completion of repairs on first visit (no subsequent visit required).</p>	<p>Monthly &amp; measured collectively against all Serviced Sites</p>	<p>90% of Reactive Maintenance visits completed successfully on the first visit, as measured within each Service Period.</p>	<p>[REDACTED]</p>

C5	<p>Reactive Maintenance (Critical &amp; Non-Critical Failures) –</p> <p>Time to Completed Job</p>	<p>In any event, all Requested Repair jobs to be completed (classed as a Completed Job) within 5 Working Days following the day of booking.</p>	<p>Monthly &amp; measured collectively against all Serviced Sites</p>	<p>95% compliance, as measured within each Service Period.</p>	<p>[REDACTED]</p>
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ANNEX B TO PART A

[REDACTED]

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## Part B: Performance Monitoring

4. Performance Monitoring and Performance Review 4.1 The Supplier shall provide the Buyer with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- 4.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 4.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 4.1.3 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 4.1.4 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
  - 4.1.5 such other details as the Buyer may reasonably require from time to time.
- 4.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("Performance Review Meetings") on a monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
- 4.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
  - 4.2.2 be attended by the Supplier's Representative and the Buyer's Representative; and
  - 4.2.3 be recorded, where key discussion points will be noted by the Buyer and these will be circulated by the Buyer to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 4.3 The meeting notes (key discussion points) of the preceding Quarterly Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 4.4 The Supplier shall provide to the Buyer such documentation as the Buyer 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.
- 4.5 Where the Supplier fails to provide the required Performance Monitoring Reports, the Service Levels will be deemed not to have been met and the Buyer shall be entitled to apply Service Credits for each Service Level until such time as the Performance Monitoring Report is provided, upon which the actual achieved Service Credits will be calculated.

5. Satisfaction Surveys 5.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

## Schedule 11 (Continuous Improvement)

### 1. Supplier's Obligations

- 1.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("Continuous Improvement Plan") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 1.3.1 identifying the emergence of relevant new and evolving technologies;
  - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 1.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Start Date.
- 1.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.

- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
  - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12 At any time during the Contract Period of the Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.



# Schedule 12 (Benchmarking)

## 1. Definitions

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

"Benchmark Review" a review of the Deliverables carried out in accordance with this Schedule to determine whether those Deliverables represent Good Value;

"Benchmarked Deliverables" any Deliverables included within the scope of a Benchmark Review pursuant to this Schedule;

"Comparable Rates" the Charges for Comparable Deliverables;

"Comparable Deliverables" deliverables that are identical or materially similar to the Benchmarked Deliverables (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Deliverables exist in the market, the Supplier shall propose an approach for developing a comparable Deliverables benchmark;

"Comparison Group" a sample group of organisations providing Comparable Deliverables which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations;

"Equivalent Data" data derived from an analysis of the Comparable Rates and/or the Comparable Deliverables (as applicable) provided by the Comparison Group;

"Good Value" that the Benchmarked Rates are within the Upper Quartile; and

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

## 2. When you should use this Schedule

2.1 The Supplier acknowledges that the Buyer wishes to ensure that the Deliverables, represent value for money to the taxpayer throughout the Contract Period.

2.2 This Schedule sets out to ensure the Contract represents value for money throughout and that the Buyer may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraph 3 of this Schedule.

2.3 Amounts payable under this Schedule shall not fall with the definition of a Cost.

### 3. Benchmarking

#### 3.1 How benchmarking works

3.1.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Deliverables.

3.1.2 The Buyer shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Start Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.

3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Deliverables are, individually and/or as a whole, Good Value.

3.1.4 The Deliverables that are to be the Benchmarked Deliverables will be identified by the Buyer in writing.

3.1.5 Upon its request for a Benchmark Review the Buyer shall nominate a benchmarker. The Supplier must approve the nomination within ten (10) Working Days unless the Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Buyer may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.

3.1.6 The cost of a benchmarker shall be borne by the Buyer (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Deliverables are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Buyer.

#### 3.2 Benchmarking Process

3.2.1 The benchmarker shall produce and send to the Buyer, for Approval, a draft plan for the Benchmark Review which must include:

- a) a proposed cost and timetable for the Benchmark Review;
- b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
- c) a description of how the benchmarker will scope and identify the Comparison Group.

- 3.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
- 3.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its Approval of the draft plan.
- 3.2.5 Once it has received the Approval of the draft plan, the benchmarker shall:
- a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the benchmarker's professional judgment using:
    - (A) information from other service providers to the Buyer;
    - (B) survey information;
    - (C) information from "in-house" providers to the Buyer to the extent that the benchmarker considers that they are valid comparators;
    - (D) market intelligence;
    - (E) the benchmarker's own data and experience;
    - (F) relevant published information; and
    - (G) pursuant to Paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;
  - b) by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
  - c) using the Equivalent Data, calculate the Upper Quartile;
  - d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- 3.2.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

- 3.2.7 In carrying out the benchmarking analysis the benchmarker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
- a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
  - b) exchange rates;
  - c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

### 3.3 Benchmarking Report

- 3.3.1 For the purposes of this Schedule "Benchmarking Report" shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;
- 3.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Buyer, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall be required to:
- a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
  - b) if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
  - c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not the Benchmarked Deliverables are, individually or as a whole, Good Value.
- 3.3.3 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Buyer in accordance with Clause 28 (Changing the contract).

## Schedule 13 (Contract Management)

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):
- |                         |  |
|-------------------------|--|
| "Contract Review Board" | the board established in accordance with paragraph 4.1 of this Schedule; and |
| "Project Manager"       | the manager appointed in accordance with paragraph 2.1 of this Schedule;     |

### 2. Project Management

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

### 3. Role of the Supplier Project Manager

- 3.1 The Supplier Project Manager shall be:
- 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
  - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
  - 3.1.3 able to cancel any delegation and recommence the position himself; and
  - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.

- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

#### 4. Role of The Contract Review Board

- 4.1 The Contract Review Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Contract Review Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to this Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Contract Review Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Contract Review Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

#### 5. Contract Risk Management

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues; and
  - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

## Annex: Contract Review Boards

The Parties agree to operate the Contract Review Board at the locations and at the frequencies set out below:

Name	Contract Review Board
Location of Meetings	<ul style="list-style-type: none"> <li>• Where feasible, at a Serviced Site nominated by the Buyer;</li> <li>• Via web hosted service as directed by the Buyer; or</li> <li>• as otherwise agreed between the Parties</li> </ul>
Buyer Members of Contract Review Board	Contract Manager (CCG) (Chairperson) Project Manager Key Threats Manager (Operational management) Commercial Manager (part time) Other representatives from the Buyer as required
Supplier Members of Contract Review Board	Project Manager Other representatives from the Supplier as required
Start Date for Contract Review Board meetings	1 week following Start Date
Frequency of Contract Review Board meetings	Monthly (or as agreed)



## Schedule 14 (Business Continuity and Disaster Recovery)

### 1. Definitions

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

"BCDR Plan" has the meaning given to it in Paragraph 2.1 of this Schedule;

"Business Continuity Plan" has the meaning given to it in Paragraph 2.2.2 of this Schedule;

"Disaster Recovery Plan" has the meaning given to it in Paragraph 2.2.3 of this Schedule;

"Related Supplier" any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;

"Review Report" has the meaning given to it in Paragraph 6.3 of this Schedule; and

"Supplier's Proposals" has the meaning given to it in Paragraph 6.3 of this Schedule;

### 2. BCDR Plan

2.1 At least ninety (90) Working Days after the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a "BCDR 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 Deliverables; and

2.1.2 the recovery of the Deliverables in the event of a Disaster

2.2 The BCDR Plan shall be divided into three sections:

2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;

2.2.2 Section 2 which shall relate to business continuity (the "Business Continuity Plan"); and

2.2.3 Section 3 which shall relate to disaster recovery (the "Disaster Recovery Plan").

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are

unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### 3. General Principles of the BCDR Plan (Section 1)

#### 3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
  - a) failure or disruption scenarios and assessments of likely frequency of occurrence;
  - b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
  - c) identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
  - d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
  - e) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;

- 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
  - 3.2 The BCDR Plan shall be designed so as to ensure that:
    - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
    - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
    - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
    - 3.2.4 it details a process for the management of disaster recovery testing.
  - 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
  - 3.4 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.
4. Business Continuity (Section 2)
- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
    - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
    - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
  - 4.2 The Business Continuity Plan shall:
    - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
    - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
    - 4.2.3 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 Deliverables during any period of invocation of the Business

Continuity Plan; and

- 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery (Section 3)

5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer 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.

5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:

- 5.2.1 loss of access to the Buyer Premises;
- 5.2.2 loss of utilities to the Buyer Premises;
- 5.2.3 loss of the Supplier's helpdesk or CAFM system;
- 5.2.4 loss of a Subcontractor;
- 5.2.5 emergency notification and escalation process;
- 5.2.6 contact lists;
- 5.2.7 staff training and awareness;
- 5.2.8 BCDR Plan testing;
- 5.2.9 post implementation review process;
- 5.2.10 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 Deliverables during any period of invocation of the Disaster Recovery Plan;
- 5.2.11 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;
- 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.2.13 testing and management arrangements.

6. Review and changing the BCDR Plan

6.1 The Supplier shall review the BCDR Plan:

- 6.1.1 on a regular basis and as a minimum once every six (6) Months;
- 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
- 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule)

whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting

its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables 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 such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "Review Report") setting out 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.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals 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 Deliverables.

## 7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
  - 7.1.1 regularly and in any event not less than once in every Contract Year;
  - 7.1.2 in the event of any major reconfiguration of the Deliverables
  - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer 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 Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer 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.

- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
  - 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

## 8. Invoking the BCDR Plan

- 8.1 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 Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

## 9. Circumstances beyond your control

- 9.1 The Supplier shall not be entitled to relief under Clause 24 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

## Schedule 16 (Security)

### Part A: Short Form Security Requirements

#### 1. Definitions

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

"Breach of Security"	the occurrence of:
a)	any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer 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 Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,
	in either case as more particularly set out in the Security Policy where the Buyer has required compliance therewith in accordance with paragraph 2.2;
"Security Management Plan"	the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.

#### 2. Complying with security requirements and updates to them

2.1 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

2.2 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.

2.3 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 Deliverables it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.

2.4 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

### 3. Security Standards

3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.

3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

3.2.1 is in accordance with the Law and this Contract; 3.2.2 as a minimum demonstrates Good Industry Practice;

3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and 3.2.4 where specified by the Buyer in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy.

3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 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.

3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

### 4. Security Management Plan

#### 4.1 Introduction

4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

#### 4.2 Content of the Security Management Plan

#### 4.2.1 The Security Management Plan shall:

- a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
- b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
- c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer 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 Deliverables;
- e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and
- g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

#### 4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.

4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will 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 from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

#### 4.4 Amendment of the Security Management Plan

4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

- a) emerging changes in Good Industry Practice; b) any change or proposed change to the Deliverables and/or associated processes;
- c) where necessary in accordance with paragraph 2.2, any change to the Security Policy;
- d) any new perceived or changed security threats; and e) any reasonable change in requirements requested by the Buyer.

4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:

- a) suggested improvements to the effectiveness of the Security Management Plan;
- b) updates to the risk assessments; and
- c) suggested improvements in measuring the effectiveness of controls.

4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.

4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the 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.

## 5. Security breach

5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:

5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:

- a) minimise the extent of actual or potential harm caused by any Breach of Security;
- b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
- c) prevent an equivalent breach in the future exploiting the same cause failure; and
- d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.



## Schedule 17 (Service Recipients)

### 1. When you should use this Schedule

- 1.1 This Schedule is required where Service Recipients want to join with the Buyer to efficiently contract collectively under a single Contract rather than as separate individual buyers under separate contracts.

### 2. Definitions

- 2.1 "Service Recipients" means a person named as such in Annex A to this Schedule which shall be incorporated into the Award Form.

### 3. Service Recipients benefits under the Contract

- 3.1 The Buyer has entered into this Contract both for its own benefit and for the benefit of the Service Recipients.
- 3.2 The Service Recipients who are to benefit under the Contract are identified in Annex A to this Schedule which shall be included into the Award Form.
- 3.3 Service Recipients shall have all of the rights granted to the Buyer under the Contract as if they had been parties to the Contract themselves. Accordingly, where the context requires in order to assure the Service Recipients rights and benefits under the Contract, and unless the Buyer otherwise specifies, references to the Buyer in the Contract (including those references to a Party which are intended to relate to the Buyer) shall be deemed to include a reference to the Service Recipients.
- 3.4 Each of the Service Recipients will be a third party beneficiary for the purposes of the CRTPA and may enforce the relevant provisions of the Contract pursuant to CRTPA.
- 3.5 The Parties to the Contract may in accordance with its provisions vary, terminate or rescind the Contract or any part of it, without the consent of any Service Recipient.
- 3.6 The enforcement rights granted to Service Recipients under Paragraph 3.4 are subject to the following provisions:
  - 3.6.1 the Buyer may enforce any provision of the Contract on behalf of a Service Recipient;
  - 3.6.2 any claim from a Service Recipient under the CRTPA to enforce the Contract shall be brought by the Buyer if reasonably practicable for the Buyer and Service Recipient to do so;
  - 3.6.3 the Buyer will ensure that Service Recipients comply with the Dispute Resolution Procedure in respect of any Disputes that involve a Service Recipient; and
  - 3.6.4 the Supplier's limits and exclusions of liability in the Contract shall apply to any claim to enforce the Contract made by the Buyer on behalf of a Service Recipient and to any claim to enforce the Contract made by a Service Recipient acting on its own behalf.

- 3.7 Other terms and conditions applicable to the provision of the Deliverables to any Service Recipient are as follows:
  - 3.7.1 if a Service Recipient needs to comply with an obligation or responsibility of the Buyer to allow the Supplier to provide the Deliverables, the Buyer will remain responsible for this compliance, but compliance by the Service Recipient will be deemed to be compliance by the Buyer;
  - 3.7.2 to the extent that the Service Recipient receives the benefit of the Services, the term "Government Data" will be deemed to extend to any data of the Service Recipient;
  - 3.7.3 during the Contract Period, the Buyer and the Supplier may agree in writing to remove or add Service Recipients from the scope of this Contract and, as necessary, adjusting the Charges on an equitable basis, provided that such changes are in all cases compliant with regulation 72 of the Regulations.
- 3.8 If the Buyer and Supplier agree to remove or add a Service Recipient pursuant to Paragraph 3.7.3:
  - 3.8.1 the Buyer may request that the Supplier provide Termination Assistance; and
  - 3.8.2 the Supplier will, if requested by the Buyer as a result of any UK Government reorganisation, provide the Services to any new UK Government entity designated by the Buyer.
- 3.9 Notwithstanding that Service Recipients shall each receive the same Services from the Supplier the following adjustments will apply in relation to how the Contract will operate in relation to the Buyer and Service Recipients:
  - 3.9.1 Services will be provided by the Supplier to each Service Recipient and Buyer separately;
  - 3.9.2 the Supplier's obligation in regards to reporting will be owed to each Service Recipient and Buyer separately;
  - 3.9.3 the Buyer and Service Recipients shall be entitled to separate invoices in respect of the provision of Deliverables;
  - 3.9.4 the separate invoices will correlate to the Deliverables provided to the respective Buyer and Service Recipients;
  - 3.9.5 the Charges to be paid for the Deliverables shall be calculated on a per Service Recipient and Buyer basis and each Service Recipient and the Buyer shall be responsible for paying their respective Charges;
  - 3.9.6 the Service Levels and corresponding Service Credits will be calculated in respect of each Service Recipient and Buyer, and they will be reported and deducted against Charges due by each respective Service Recipient and Buyer; and
  - 3.9.7 such further adjustments as the Buyer and each Service Recipient may notify to the Supplier from time to time.

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## Annex A – Service Recipients

The Deliverables shall also be provided for the benefit of the following Service Recipients:  
[REDACTED]



# Schedule 18 (Supply Chain Visibility)

## 1. Definitions

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

"Contracts Finder" the Government's publishing portal for public sector procurement opportunities;

"SME" an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;

"Supply Chain Information Report Template" the document at Annex 1 of this Schedule 18; and

"Unconnected Sub-contract" any contract or agreement which is not a contract" Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017

"Unconnected Sub-contractor" any third party with whom the Supplier contractor" enters into an Unconnected Sub-contract

## 2. Visibility of Sub-Contract Opportunities in the Supply Chain

2.1 The Supplier shall:

- 2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all SubContract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;
- 2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;
- 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
- 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer; and
- 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

- 2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 18 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligations on the Supplier set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the Start Date.
- 2.4 Notwithstanding Paragraph 2.1, the Buyer may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

### 3. Visibility of Supply Chain Spend

- 3.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “SME Management Information Reports”) to the Buyer which incorporates the data described in the Supply Chain Information Report Template which is:
  - 3.1.1 the total contract revenue received directly on the Contract;
  - 3.1.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
  - 3.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Buyer from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1.1 –3.1.3 and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Buyer issuing a replacement version. The Buyer agrees to give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.
- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Buyer.

### 4. Visibility of Payment Practice

- 4.1 If this Contract has at the Start Date an anticipated contract value in excess of £5 million per annum (excluding VAT) averaged over the Contract Period and without prejudice to Clause 4.6, Clause 8.2.1(b) and 8.2.2(b), the Supplier shall:
  - (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
    - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or

- (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
  - (b) include within the Supply Chain Information Report a summary of its compliance with this Paragraph 4.4, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.
- 4.2 If any Supply Chain Information Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall provide to the Buyer within 15 Working Days of submission of the latest Supply Chain Information Report an action plan (the “Action Plan”) for improvement. The Action Plan shall include, but not be limited to, the following:
- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
  - (b) actions to address each of the causes set out in Sub-Paragraph (a); and
  - (c) mechanism for and commitment to regular reporting on progress to the Supplier’s Board.
- 4.3 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 4.4 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Subcontractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier’s Solution (to the extent it is not already included).
- 4.5 If the Supplier notifies the Buyer (whether in a Supply Chain Report or otherwise) that the Supplier has failed to pay 95% or above of its Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).



# Annex 1 - Supply Chain Information Report template

[REDACTED]

## Schedule 19 (Cyber Essentials Scheme)

### 1. Definitions

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

"Cyber Essentials Scheme"

2. What Certification do you need 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 (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at:

<https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

"Cyber Essentials Basic Certificate"

the certificate awarded on the basis of selfassessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;

"Cyber Essentials Certificate"

Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Framework Award Form

"Cyber Essential Scheme Data"

sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and

"Cyber Essentials Plus Certificate"

the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

2.1 Where the Award Form requires that the Supplier provide a Cyber Essentials Certificate the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer promptly upon the Start Date. Where the Supplier fails to comply with this Paragraph it shall be prohibited from commencing the provision of Deliverables

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under any Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.

- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period of the Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.
- 2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the Start date of the Contract but before the end of the Contact Period, the Supplier shall deliver to the Buyer evidence of:
  - 2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and
  - 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for material Default.
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Paragraph 2.1 of this Schedule.
- 2.6 This Schedule shall survive termination or expiry of this Contract.



## Schedule 20 (Processing Data)

### 1. Status of the Controller

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:
- 1.1.1 “Controller” in respect of the other Party who is “Processor”;
  - 1.1.2 “Processor” in respect of the other Party who is “Controller”;
  - 1.1.3 “Joint Controller” with the other Party;
  - 1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”,
- in respect of certain Personal Data under a Contract and shall specify in Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

### 2. Where one Party is Controller and the other Party its Processor

- 2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) by the Controller.
- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 2.3 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:
- 2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- 2.4.1 Process that Personal Data only in accordance with Annex 1 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
  - 2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, 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 Personal Data Breach;
- c) state of technological development; and
- d) cost of implementing any measures;

2.4.3 ensure that:

- a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (Processing Personal Data));
- b) it uses all reasonable endeavours 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 Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
  - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
  - (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 the Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

2.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- a) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or
- b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "IDTA"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "Addendum"), as published by the Information Commissioner's Office from time to time, as well as any additional measures determined by the Controller;
- c) the Data Subject has enforceable rights and effective legal remedies;
- d) 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
- e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- 2.4.5 where the Personal Data is subject to EU GDPR, 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 transfer is in accordance with Article 45 of the EU GDPR; or
- b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission’s decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
- c) the Data Subject has enforceable rights and effective legal remedies;
- d) the transferring Party 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 nontransferring Party in meeting its obligations); and
- e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 2.4.6 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.
- 2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 2.5.2 receives a request to rectify, block or erase any Personal Data;
- 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
- 2.5.5 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
- 2.5.6 becomes aware of a Personal Data Breach.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
  - 2.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4 assistance as requested by the Controller following any Personal Data Breach; and/or
  - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 2.8.1 the Controller determines that the Processing is not occasional;
  - 2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 2.11 Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
    - 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
    - 2.11.2 obtain the written consent of the Controller;
    - 2.11.3 enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
    - 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
  - 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
  - 2.13 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Schedule 20 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 the Contract).
  - 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
3. Where the Parties are Joint Controllers of Personal Data
- 3.1 In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement Paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 20 (Processing Data).

#### Independent Controllers of Personal Data

- 3.2 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 3.3 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 3.4 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 3.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 3.5 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
- 3.6 The Parties shall only provide Personal Data to each other:

- 3.6.1 to the extent necessary to perform their respective obligations under the Contract;
  - 3.6.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - 3.6.3 where it has recorded it in Annex 1 (Processing Personal Data).
- 3.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 3.8 A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 3.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (“Request Recipient”):
- 3.9.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - 3.9.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 3.10 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- 3.10.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - 3.10.2 implement any measures necessary to restore the security of any compromised Personal Data;

- 3.10.3 work with the other Party to make any required notifications to the Information Commissioner’s Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 3.10.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 3.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (Processing Personal Data).
- 3.12 Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under the Contract which is specified in Annex 1 (Processing Personal Data).
- 3.13 Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 3.2 to 3.12 of this Schedule 20.

## Annex 1 - Processing Personal Data

This Annex 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 Annex shall be with the Authority at its absolute discretion.

1.1 The contact details of the Buyer’s Data Protection Officer are: via [REDACTED]

1.2 The contact details of the Supplier’s Data Protection Officer are:

[REDACTED]

1.3 Any further instructions shall be incorporated into this Annex.

Description	Details
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<p>Identity of Controller for each Category of Personal Data</p>	<p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>● Business contact details of Supplier Personnel for which the Supplier is the Controller,</li> <li>● Business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Buyer’s duties under the Contract) for which the Buyer is the Controller,</li> </ul>
<p>Duration of the Processing</p>	<p>For the duration of the procurement of goods and the maintenance provision.</p>
<p>Nature and purposes of the Processing</p>	<p>Engagement between Buyer and Supplier in relation to the management and operation of the contract.</p>
<p>Type of Personal Data</p>	<p>Name</p> <p>Work E-mail address</p> <p>Work Telephone numbers</p>
	<p>Supplier personnel information needed for site visits:</p> <p>Date of Birth</p>
<p>Categories of Data Subject</p>	<p>Staff</p> <p>Sub-contractors</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>Personal Data forming a record shall be retained in accordance with clause 6.2 of the Core Terms and subsequently destroyed in accordance with government policy on secure disposal.</p>
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## Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing the Contract)

Contract Details	
This variation is between:	The Ministry of Justice ("the Buyer") And VMI SISTEMAS DE SEGURANÇA LTDA ("the Supplier")
Contract name:	Supply and Maintenance of Security X-Ray Baggage Scanners ("the Contract")
Contract reference number:	[insert contract reference number]
Details of Proposed Variation	
Variation initiated by:	[delete as applicable: Buyer/Supplier]
Variation number:	[insert variation number]
Date variation is raised:	[insert date]
Proposed variation	
Reason for the variation:	[insert reason]
An Impact Assessment shall be provided within:	[insert number] days
Impact of Variation	
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]
Outcome of Variation	
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li>[Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]</li> </ul>
Financial variation:	Original Contract Value: £ [insert amount]
	Additional cost due to variation: £ [insert amount]

	New Contract value:	£ [insert amount]
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1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer

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

Schedule 21 (Variation Form)

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3. The 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 Buyer

Signature \_\_\_\_\_

Date \_\_\_\_\_

Name (in Capitals) \_\_\_\_\_

Address \_\_\_\_\_

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

Signature \_\_\_\_\_

Date \_\_\_\_\_

Name (in Capitals) \_\_\_\_\_

Address \_\_\_\_\_



## Schedule 22 (Insurance Requirements)

1. The insurance you need to have
  - 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule 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 thirty (30) days from the Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
  - 1.2 The Insurances shall be:
    - 1.2.1 maintained in accordance with Good Industry Practice;
    - 1.2.2 (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;
    - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
    - 1.2.4 maintained for at least six (6) years after the End Date.
  - 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.
2. How to manage the insurance
  - 2.1 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 Deliverables 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;
    - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
    - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
3. What happens if you aren’t insured
  - 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
  - 3.2 Breach by the Supplier of its obligations under this Schedule 22 (Insurance Requirements) including for the avoidance of doubt but not limited to any failure by

the Supplier to reimburse the Buyer upon demand for the Insurances purchased by the Buyer under paragraph 3.3.1 below, shall be a material Default of the Contract and shall entitle the Buyer to terminate the Contract in accordance with Clause 10.4.1.

3.3 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may at its discretion (and without affecting its rights under paragraph 3.2):

3.3.1 elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium(s) and other reasonable costs incurred in connection therewith as a debt due from the Supplier (including at the Buyer's discretion, by setting off such reasonable premium and costs against the Charges); and/or

3.3.2 refuse to accept delivery and/or installation of the Goods and/or performance of the Services until the Buyer is satisfied that the Insurances are in force and effect and meet the requirements of this Schedule.

3.4 Exercise by the Buyer of its rights under paragraph 3.3 above shall not constitute a Buyer Cause and shall not entitle the Supplier from relief from its obligations under the Contract, including but not limited to the obligations to comply with the Implementation Plan and to pay Delay Payments for Delays.

#### 4. Evidence of insurance you must provide

4.1 The Supplier shall within thirty (30) days of the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

#### 5. Making sure you are insured to the required amount

5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.

#### 6. Cancelled Insurance

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

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

notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## 7. Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables 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 Buyer) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## ANNEX: REQUIRED INSURANCES

1. The Supplier shall hold the following insurance cover from no later than 30 days after the Start Date in accordance with this Schedule:
  - 1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than] ~~ten million pounds (£10,000,000);~~
  - 1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) ~~of not less than ten million pounds (£10,000,000);~~ and
  - 1.3 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) ~~of not less than ten million pounds (£10,000,000).~~



## Schedule 23 (Guarantee)

### [No Guarantee is required at the commencement of this contract]

#### 1. Definitions

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

"Guarantee" a deed of guarantee in favour of a Buyer in the form set out in the Annex to this Schedule; and

"Guarantor" the person acceptable to a Buyer to give a Guarantee;

#### 2. Guarantee

2.1 Where a Buyer has notified the Supplier that the award of the Contract by the Buyer shall be conditional upon receipt of a valid Guarantee, then, on or prior to the execution of the Contract, as a condition for the award of the Contract, the Supplier shall deliver to the Buyer:

2.1.1 an executed Guarantee from a Guarantor; and

2.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

2.2 Where a Buyer has procured a Guarantee from the Supplier under Paragraph 2.1 above, the Buyer may terminate the Contract for material Default where:

2.2.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

2.2.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

2.2.3 an Insolvency Event occurs in respect of the Guarantor;

2.2.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever;  
or

2.2.5 the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the Buyer;

2.2.6 and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Buyer.

## Annex 1 – Form of Guarantee

[Guidance Note: this is a draft form of guarantee which can be used to procure a Guarantee if required at any time throughout the term of this contract, but it will need to be amended to reflect the Beneficiary's requirements.]

[INSERT NAME OF THE GUARANTOR]

- AND -

[INSERT NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

## DEED OF GUARANTEE

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

### PROVIDED BY:

[Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("Guarantor")

### WHEREAS:

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

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

### 1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

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

[Guidance Note: Insert and/or settle Definitions, including from the following list]

"Beneficiary(s)"	means all the Buyer(s) under a Contract [Insert name of the Buyer with whom the Supplier enters into the Contract] and "Beneficiaries" shall be construed accordingly;
"Goods"	has the meaning given to it in the Contract;
"Guaranteed Agreement"	means the contract with Contract Reference [Insert contract reference number] for the Goods and/or Services dated on or about the date hereof made between the Beneficiary and the Supplier;
"Guaranteed Obligations"	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;

"Services"

has the meaning given to it in the Contract;

"Supplier"

means [Insert the name, address and registration number of the Supplier as each appears in the Award Form].

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

- 2.1 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.
- 2.2 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.
- 2.3 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:

2.3.1 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

2.3.2 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 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.

2.4 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 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.

### 3. OBLIGATION TO ENTER INTO A NEW CONTRACT

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.

### 4. DEMANDS AND NOTICES

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

[Insert Address of the Guarantor in England and Wales]

[Insert Facsimile Number]

For the Attention of [Insert details]

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

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

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

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

4.2.3 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.

4.3 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.

4.4 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.

## 5. BENEFICIARY'S PROTECTIONS

5.1 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.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 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;

- 5.2.2 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;
- 5.2.3 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
- 5.2.4 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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.

- 5.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

## 6. GUARANTOR INTENT

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.

## 7. RIGHTS OF SUBROGATION

- 7.1 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:

7.1.1 of subrogation and indemnity;

7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and 7.1.3 to prove in the liquidation or insolvency of the Supplier,

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.

## 8. DEFERRAL OF RIGHTS

- 8.1 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:

8.1.1 exercise any rights it may have to be indemnified by the Supplier;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

8.1.3 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;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 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.

## 9. REPRESENTATIONS AND WARRANTIES

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 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;

9.1.2 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;

9.1.3 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 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;

9.1.4 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

- 9.1.5 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.

## 10. PAYMENTS AND SET-OFF

- 10.1 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.
- 10.2 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.
- 10.3 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.

## 11. GUARANTOR'S ACKNOWLEDGEMENT

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.

## 12. ASSIGNMENT

- 12.1 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.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

## 13. SEVERANCE

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.

## 14. THIRD PARTY RIGHTS

Other than the Beneficiary, 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.

## 15. SURVIVAL

This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

## 16. GOVERNING LAW

- 16.1 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.
- 16.2 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.
- 16.3 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).
- 16.4 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.

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

- 16.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

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

EXECUTED as a DEED by

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

Director

[Subject to Contract]  
Schedule 23 (Guarantee)  
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Director/Secretary

## Schedule 24 (Financial Difficulties)

### 1. Definitions

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

- |                            |   |
|----------------------------|---|
| "Credit Rating Threshold"  | the minimum credit rating level for the Monitored Company as set out in Annex 2 and   |
| "Financial Distress Event" | the occurrence or one or more of the following events: <ul style="list-style-type: none"><li>a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;</li><li>b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;</li><li>c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;</li><li>d) Monitored Company committing a material breach of covenant to its lenders;</li><li>e) a Key Subcontractor (where applicable) notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or</li><li>f) any of the following:<ul style="list-style-type: none"><li>i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;</li><li>ii) non-payment by the Monitored Company of any financial indebtedness;</li><li>iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or</li><li>iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company</li></ul></li></ul> |

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Contract;

"Financial Distress Service Continuity Plan" a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the Contract in the event that a Financial Distress Event occurs;

"Monitored Company" Supplier, Guarantor and any Key Subcontractor; and

"Rating Agencies" the rating agencies listed in Annex 1.

2. When this Schedule applies

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.
- 2.2 The terms of this Schedule shall survive: under the Contract until the termination or expiry of the Contract.

3. What happens when your credit rating changes

- 3.1 The Supplier warrants and represents to the Buyer that as at the Start Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Annex 2.
- 3.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.
- 3.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter provide the Buyer within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Buyer (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by the Buyer. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company;

- B is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Monitored Company; and
- D is the value at the relevant date of the current liabilities of the Monitored Company.

3.4 The Supplier shall:

- 3.4.1 regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
- 3.4.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

3.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

4. What happens if there is a financial distress event

4.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2 [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:

- 4.2.1 rectify such late or non-payment; or
- 4.2.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.]

4.3 The Supplier shall and shall procure that the other Monitored Companies shall:

- 4.3.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three

- (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract; and
- 4.3.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract:
- (a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
  - (b) provide such financial information relating to the Monitored Company as the Buyer may reasonably require.
- 4.4 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Buyer or referred to the Dispute Resolution Procedure.
- 4.5 If the Buyer considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 4.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:
- 4.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract;
  - 4.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 4.5 and 4.6 shall apply to the review and

Approval process for the updated Financial Distress Service Continuity Plan; and

- 4.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.
- 5. When the Buyer can terminate for financial distress
  - 5.1 The Buyer shall be entitled to terminate this Contract for material Default if:
    - 5.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 3.4;
    - 5.1.2 the Buyer and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
    - 5.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.
- 6. What happens If your credit rating is still good
  - 6.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
    - 6.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
    - 6.1.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

## ANNEX 1: RATING AGENCIES

[Rating Agency Equifax

Credit Rating Level 1 = A+, A, A-	Excellent Risk
Credit Rating Level 2 = B+, B, B-	Very Good
Credit Rating Level 3 = C+, C, C-	Above Average
Credit Rating Level 4 = D+, D, D-	Average Risk
Credit Rating Level 5 = E+, E, E-	Below Risk
Credit Rating Level 6 = F+, F, F-	Very High Risk

Credit Rating Level 9 = G	Gazette Data Filed
Credit Rating Level 10 = I	Insolvent Code
Credit Rating Level 11 = O	Out of Date Accounts
Credit Rating Level 12 = N/A	No Accounts have been filed]

## ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

### CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity ( Monitored)	Credit Rating (long term) (insert credit rating issued for the entity at the Effective Date)	Credit Rating Threshold (insert the actual rating (e.g. AA-) or the Credit Rating Level (e.g. Credit Rating Level 3))
Supplier	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 -C and above
Guarantor	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 - C and above
Key Subcontractor	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 - C and above

## Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan		
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]	
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]	
Signed by Buyer :		Date:
Supplier [Revised] Rectification Plan		
Cause of the Default	[add cause]	
Anticipated impact assessment:	[add impact]	
Actual effect of Default:	[add effect]	
Steps to be taken to rectification:	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]

Timescale for complete Rectification of Default	[X] Working Days
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Schedule 25 (Rectification Plan)  
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Steps taken to prevent recurrence of Default	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	





## Schedule 26 (Corporate Social Responsibility)

### 1. What we expect from our Suppliers

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government. ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf))
- 1.2 The Buyer expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, the Buyer expects its suppliers and subcontractors to comply with the standards set out in this Schedule.

### 2. Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
  - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### 3. Modern Slavery, Child Labour and Inhumane Treatment

"Modern Slavery Helpline" means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

#### 3.1 The Supplier:

- 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

#### 4. Income Security

##### 4.1 The Supplier shall:

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
- 4.1.3 provide all workers with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.4 not make deductions from wages:
  - (a) as a disciplinary measure
  - (b) except where permitted by law; or

- (c) without expressed permission of the worker concerned;
- 4.1.5 record all disciplinary measures taken against Supplier Staff; and
- 4.1.6 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## 5. Working Hours

### 5.1 The Supplier shall:

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime used responsibly, taking into account:
  - (a) the extent;
  - (b) frequency; and
  - (c) hours worked;

by individuals and by the Supplier Staff as a whole;

- 5.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.
- 5.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
  - 5.3.1 this is allowed by national law;
  - 5.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;  
  
appropriate safeguards are taken to protect the workers' health and safety; and
  - 5.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
- 5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## 6. Sustainability

- 6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

## Schedule 27 (Key Subcontractors)

### 1. Restrictions on certain subcontractors

- 1.1 The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Subcontract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Distress)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.

- 1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
- 1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;
  - 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key SubContract to the Buyer;
  - 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:
    - (a) the data protection requirements set out in Clause 14 (Data protection);
    - (b) the FOIA and other access request requirements set out in Clause 16 (When you can share information);
    - (c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
    - (d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - (e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 10.4 (When the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and
  - 1.5.7 a provision restricting the ability of the Key Subcontractor to subcontract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer.





## Schedule 28 (ICT Services)

### 1. Definitions

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

- "Buyer Property" the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
- "Buyer Software" any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
- "Buyer System" the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
- "Commercial off the shelf Software" or "COTS Software" non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
- "Defect" any of the following:
- a) any error, damage or defect in the manufacturing of a Deliverable; or
  - b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
  - c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant

	Deliverable from passing any Test required under this Contract; or
	d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
"ICT Environment"	the Buyer System and the Supplier System;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any COTS Software;
"Maintenance Schedule"	has the meaning given to it in Paragraph 8 of this Schedule;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Open Source Software"	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright

	and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating Environment"	means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"><li>a) the Deliverables are (or are to be) provided; or</li><li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or</li><li>c) where any part of the Supplier System is situated;</li></ul>
"Permitted Maintenance"	has the meaning given to it in Paragraph 8.2 of this Schedule;
"Quality Plans"	has the meaning given to it in Paragraph 6.1 of this Schedule;
"Sites"	has the meaning given to it in Schedule 1 (Definitions), and for the purposes of this Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
"Software"	Specially Written Software, COTS Software and non-COTS Supplier and third party Software;
"Software Supporting Materials"	has the meaning given to it in Paragraph Error! Reference source not found. of this Schedule;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third

party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially

Written Software does not constitute New IPR;

"Supplier System"

the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

## 2. When this Schedule should be used

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

## 3. Buyer due diligence requirements

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

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

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

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

3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.

3.2. The Supplier confirms that it has advised the Buyer in writing of:

3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;

3.2.2. the actions needed to remedy each such unsuitable aspect; and

3.2.3. a timetable for and the costs of those actions.

## 4. Licensed software warranty

4.1. The Supplier represents and warrants that:

4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any SubContractor) to the

Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;

- 4.1.2. all components of the Specially Written Software shall:
  - 4.1.2.1. be free from material design and programming errors;
  - 4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Schedule 10 (Service Levels) and Documentation; and
  - 4.1.2.3. not infringe any IPR.

## 5. Provision of ICT Services

### 5.1. The Supplier shall:

- 5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;
- 5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.3. ensure that the Supplier System will be free of all encumbrances;
- 5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
- 5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables.

## 6. Standards and Quality Requirements

- 6.1. The Supplier shall develop, in the timescales specified in the Award Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("Quality Plans").
- 6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Contract Period:

- 6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
- 6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
- 6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

## 7. ICT Audit

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
  - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
  - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

## 8. Maintenance of the ICT Environment

- 8.1. If specified by the Buyer in the Award Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("Maintenance Schedule") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "Permitted Maintenance") in accordance with the Maintenance Schedule.
- 8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.
- 8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

## 9. Intellectual Property Rights in ICT

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

- 9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
    - 9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "Software Supporting Materials").
  - 9.1.2. The Supplier shall:
    - 9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
    - 9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
    - 9.1.2.3. without prejudice to Paragraph Error! Reference source not found., provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sublicense and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.
  - 9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.
- 9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer
  - 9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:
    - 9.2.1.1. of its own Existing IPR that is not COTS Software;
    - 9.2.1.2. third party software that is not COTS Software.
  - 9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-

free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

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

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

9.2.3.2. only use such third party IPR as referred to at Paragraph [Error! Reference source not found.] if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4. Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph [Error! Reference source not found.] above, it must meet the requirement by making use of COTS Software or Specially Written Software.

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

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

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

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

- 9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph [Error! Reference source not found.] the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
- 9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:
- 9.3.4.1. will no longer be maintained or supported by the developer; or
- 9.3.4.2. will no longer be made commercially available.
- 9.4. Buyer's right to assign/novate licences
- 9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph [Error! Reference source not found.] (Licences for non-COTS IPR from the Supplier and third parties to the Buyer) to:
- 9.4.1.1. a Central Government Body; or
- 9.4.1.2. 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 Buyer.
- 9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraphs [Error! Reference source not found.] and/or [9.2].
- 9.5. Licence granted by the Buyer
- 9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, nontransferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential).
- 9.6. Open Source Publication
- 9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to Paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:
- 9.6.1.1. suitable for publication by the Buyer as Open Source; and

- 9.6.1.2. based on Open Standards (where applicable), and the Buyer may, at its sole discretion, publish the same as Open Source.
- 9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:
  - 9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;
  - 9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
  - 9.6.2.3. do not contain any material which would bring the Buyer into disrepute;
  - 9.6.2.4. can be published as Open Source without breaching the rights of any third party;
  - 9.6.2.5. will be supplied in a format suitable for publication as Open Source ("the Open Source Publication Material") no later than the date notified by the Buyer to the Supplier; and
  - 9.6.2.6. do not contain any Malicious Software.
- 9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing 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:
  - 9.6.3.1. 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
  - 9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.
- 9.7. Malicious Software
  - 9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

- 9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph [9.7.2] shall be borne by the Parties as follows:
  - 9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
  - 9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).



## Schedule 29 (Key Supplier Staff)

- 1.1 The Annex 1 to this Schedule lists the key roles (“Key Roles”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date (“Key Staff”).
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on maternity or longterm sick leave; or
  - 1.4.3 the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least three (3) Months’ notice;
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and

- 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
  
- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

## Annex 1- Key Roles

[REDACTED]



## Schedule 30 (Exit Management)

### 1. Definitions

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

"Exclusive Assets"	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;
"Exit Information"	has the meaning given to it in Paragraph 3.1 of this Schedule;
"Exit Manager"	the person appointed by each Party to manage their respective obligations under this Schedule;
"Net Book Value"	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;
"Registers"	the register and configuration database referred to in Paragraph 2.2 of this Schedule;
"Replacement Goods"	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Services"	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Termination Assistance"	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant

"Termination Assistance Notice"	to the Termination Assistance Notice; has the meaning given to it in Paragraph 5.1 of this Schedule;
"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
"Transferable Assets"	Exclusive Assets which are capable of legal transfer to the Buyer;
"Transferable Contracts"	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
"Transferring Contracts"	has the meaning given to it in Paragraph 8.2.3 of this Schedule.

2. Supplier must always be prepared for contract exit

2.1 The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Supplier shall promptly:

2.2.1 create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Subcontracts and other relevant agreements required in connection with the Deliverables; and

2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables ("Registers").

2.3 The Supplier shall:

2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and

2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the

Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### 3. Assisting re-competition for Deliverables

3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "Exit Information").

3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.

3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).

3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

### 4. Exit Plan

4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;

- 4.3.2 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
- 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
- 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
- 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
- 4.3.7 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
- 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
- 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
- 4.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

4.4 The Supplier shall:

- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
  - (a) every twelve (12) months throughout the Contract Period; and
  - (b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
  - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
  - (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
- 4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## 5. Termination Assistance

5.1 The Buyer 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:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and 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 Deliverables.

5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

5.3 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## 6. Termination Assistance Period

6.1 Throughout the Termination Assistance Period the Supplier shall:

6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;

6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;

- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
  - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
  - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
  - 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

## 7. Obligations when the contract is terminated

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
- 7.2.1 vacate any Buyer Premises;
  - 7.2.2 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables 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;
  - 7.2.3 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
    - (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
    - (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the

Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

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

## 8. Assets, Sub-contracts and Software

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

8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or

8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:

8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("Transferring Assets"); 8.2.2 which, if any, of:

- (a) the Exclusive Assets that are not Transferable Assets; and
- (b) the Non-Exclusive Assets,

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

8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "Transferring Contracts"), in order for the Buyer and/or its Replacement Supplier to provide the

Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.5 Where the Buyer 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:

- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

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

8.7 The Buyer shall:

- 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, 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.

8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

8.9 The Supplier shall indemnify the Buyer (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 Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

9. No charges

9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

10. Dividing the bills

10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

- 10.1.2 the Buyer or Replacement Supplier (as applicable) 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
- 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## Schedule 31 (Supply Chain and Continuity Management)

### 1. Definitions

#### 1.1 “Step-In Trigger Event” shall mean:

- 1.1.1 any event described in this Clause 1.1.1 of Schedule 31 (Supply Chain and Continuity Management);
- 1.1.2 Not used.
- 1.1.3 a breach of this Contract by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- 1.1.4 the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;
- 1.1.5 the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Paragraph 2 (Step-In Rights) is necessary;
- 1.1.6 the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- 1.1.7 a need by the Buyer to take action to discharge a statutory duty, responsibility, or requirement under Law.

#### 1.2 “Replacement Supplier” means any third-party service provider of Replacement Services appointed by the Buyer from time to time (or where the Buyer is providing replacement Services for its own account, the Buyer); and

#### 1.3 “Replacement Services” any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the expiry or termination (in whole or in part) of this Contract, whether those services are provided by the Buyer internally and/or by any third party.

### 2. Step-in Rights

#### 2.1 On the occurrence of a Step-In Trigger Event, the Buyer may serve notice on the Supplier (a “Step-In Notice”) that it will be taking action under this Paragraph 2, either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 15 (*What you must keep confidential*)). The Step-In Notice shall set out the following:

- 2.1.1 the action the Buyer wishes to take and in particular the Services that it wishes to control (the “Required Action”);
- 2.1.2 the Step-In Trigger Event that has occurred and whether the Buyer believes that the Required Action is due to the Supplier's Default;
- 2.1.3 the date on which it wishes to commence the Required Action;
- 2.1.4 the time period which it believes will be necessary for the Required Action;
- 2.1.5 whether the Buyer will require access to the Supplier's premises and/or the Sites; and

- 2.1.6 to the extent practicable, the impact that the Buyer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 2.2 Following service of a Step-In Notice, the Buyer shall:
  - 2.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - 2.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
  - 2.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Buyer is not assuming control; and
  - 2.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Buyer's rights under this Paragraph 2.
- 2.3 For so long as and to the extent that the Required Action is continuing, then:
  - 2.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
  - 2.3.2 no deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Paragraph 2.4 shall apply to deductions from Charges in respect of other Services; and
  - 2.3.3 the Buyer shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 2.4 If the Supplier demonstrates to the reasonable satisfaction of the Buyer that the Required Action has resulted in:
  - 2.4.1 the degradation of any Services not subject to the Required Action; or
  - 2.4.2 the non-Achievement of a Milestone, beyond that which would have been the case had the Buyer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 2.5 Before ceasing to exercise its step in rights under this Paragraph 2 the Buyer shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
  - 2.5.1 the Required Action it has actually taken; and
  - 2.5.2 the date on which the Buyer plans to end the Required Action (the "**StepOut Date**") subject to the Buyer being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Paragraph 2.2.
- 2.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Buyer's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

- 2.7 If the Buyer does not approve the draft Step-Out Plan, the Buyer shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Buyer for the Buyer's approval. The Buyer shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 2.8 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Paragraph 2, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
- 2.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
  - 2.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving the Step-In Notice is identified as not being the result of the Supplier's Default).

### **3. AGREEMENT WITH KEY-SUBCONTRACTORS**

- 3.1 The Buyer may at any time after the Start Date (whether or not the Buyer serves a Termination Notice and/or a Step-In Notice) require the Supplier to enter into an agreement with the Buyer and any Key Subcontractor(s) as nominated by the Buyer on substantially the same terms as those set out in the Annex to this Schedule 31 to enable such Key Subcontractor(s) to provide the Deliverables or substantially similar deliverables to the Buyer in the event the Buyer elects to. The Supplier shall enter into, and shall procure that such nominated Key Subcontractor(s), such agreement promptly and in accordance with the Buyer's reasonable instructions.

### **4. ESCROW**

- 4.1 At the Supplier's cost and upon written request by the Buyer, Supplier shall within 90 days of the date of the Start Date, upon terms to be agreed between the Parties (such agreement not to be unreasonably withheld), enter into an escrow agreement ("Escrow Agreement") with such escrow agent as the Parties shall agree from time to time ("Escrow Agent"). The Supplier shall procure that the Escrow Agent enters into the Escrow Agreement and shall and include or procure the inclusion of the Buyer in the relevant escrow arrangements in respect of the Software, and any and all relevant technical documentation reasonably required by the Buyer. The Buyer shall have the right to receive such Software and such technical documentation (to include but not limited to technical data, drawings, specifications and training materials to reasonably allow the Buyer to arrange ongoing repairs and maintenance of the X-Ray Baggage Scanner Units purchased by the Buyer under this contract for the full term of the contract to cover the 10 year life expectancy of the Units) from the Escrow Agent in accordance with the terms of the Escrow Agreement(s) and in any event only if:
- 4.1.1 the Supplier goes into receivership, administration, passes a resolution for its winding up or has a winding up order issued against it which (in each case) remains in effect for more than 30 days and the receiver, administrator, liquidator, trustee in bankruptcy or other equivalent officer fails to assure the Buyer (to the Buyer's reasonable satisfaction) that it will

maintain the Software and will supply the Buyer with the Services pursuant to this Contract;

4.1.2 (where applicable) the Buyer exercises its right to step-in pursuant to paragraph 2 above;

4.1.3 the Buyer terminates the Contract pursuant to Clause 10.4; and/or

4.1.4 the Supplier is in material breach of its obligations under this Contract, and has failed to remedy such default notified by the Buyer within a reasonable time (and the Buyer has given at least 14 days' notice of its intention to invoke escrow).

4.2 Supplier shall, subject to agreement of the Escrow Agreement, at the Buyer's reasonable expense promptly (but not more than once every six months unless otherwise agreed between the Parties) deliver to the Escrow Agent the latest release of Software in respect of which the Buyer is licensed ("Deposited Software").

4.3 The Buyer shall only make and use copies of the whole or any part of Software as is strictly necessary for purposes of continued supply of Services for the benefit of the Buyer and such copies of the Software shall be subject to all limitations placed on the use of the Software under this Contract.

4.4 In circumstances where the Buyer obtains the release of the Deposited Software from escrow, the Supplier hereby grants to the Buyer (on behalf of itself and any Replacement Supplier) a perpetual, assignable, royalty-free and non-exclusive licence to use, support, modify and enhance the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services.

## **5. OPTION TO PURCHASE**

5.1 Upon the commencement of any Supplier Insolvency Event the Buyer shall have the exclusive option to purchase such Goods (or any part thereof) as described in Paragraph 6.1.6 of Schedule 2 (Specification) at the rates set out in Schedule 3 (Charges) or as otherwise agreed by the Parties. The Buyer shall exercise its option to purchase by giving to the Supplier not less than 10 days' written notice and the Supplier shall not be entitled to sell and/or otherwise dispose of the Goods described in Paragraph 6.1.6 of Schedule 2 (Specification) unless the Buyer has informed the Supplier in writing it does not wish to purchase such Goods, or a period of 30 days has expired from the commencement of a the Supplier Insolvency Event or Step-in Trigger Event.

## **ANNEX 1: Agreement Template**

**DATED: 18 November 2022**

**The Ministry of Justice**

**and**

**VMI Sistemas de Segurança Ltd**

**and**

**Twofold Ltd**

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SUB-CONTRACTOR'S DIRECT AGREEMENT

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**THIS AGREEMENT**  
("Agreement") is made as a deed dated 18 November 2022

**BETWEEN:**

- (1) **The Ministry of Justice** whose address is 5 Wellington Place, Leeds, LS1 4AP (the "**Authority**");
- (2) **VMI Sistemas de Segurança Ltda.** ("VMI"), Brazilian Company registration number. 05.293.074/0001-87, headquartered at Avenida Hum, nº. 55 Distrito Industrial Genesco Aparecido de Oliveira, in the city of Lagoa Santa – MG, postal code: 33.400-000 (the "**Supplier**"),
- (3) **Twofold LIMITED** Company Registration Number: 4043149, Registered Office: 77 Milford Rd RG1 8LG

**WHEREAS:**

- (A) The Supplier and the Sub-Contractor have entered into the Sub-Contract pursuant to which the Sub-Contractor will, inter alia, perform certain of the Supplier's obligations under the Project Agreement.

- (B) The Parties have entered into this Agreement for the purposes of, inter alia, regulating their relationship in circumstances where the Project Agreement and/or the Sub -Contract, is or is about to be, terminated.
- (C) This is the Sub-Contractor's Direct Agreement (Authority) contemplated by the Project Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, including the recitals, the following words and expressions shall have the following meanings, insofar as the context shall admit:

<b>"Continuing Services"</b>	the Services (as amended under this Agreement);
<b>"Authority Step In Period"</b>	a period of [x] months commencing on the date of either:  (a) Service by the Authority of a Project Agreement Termination Notice; or  (b) Service by the Sub-Contractor of a notice under clause 2.4 below.
<b>"Extended Period"</b>	a period of [x] months from the Operative Date or such longer period as determined pursuant to the provisions of
	clause 5;
<b>"Fee"</b>	the technical Support and Maintenance fee and other amounts payable to the Sub-Contractor by the Supplier under the terms of the Sub-Contract;
<b>"Sub-Contract Termination Notice"</b>	any notice (or other act or omission evidenced in writing) pursuant to which the Sub-Contractor evinces an intention to terminate, rescind or repudiate the SubContract;
<b>"Operative Date"</b>	the date upon which the Project Agreement terminates or such later date as may be requested by the Authority in its notice served under Clause 3.1 below;
<b>"Project Agreement"</b>	the agreement dated on or about the date hereof between the Authority and the Supplier relating to <i>[insert detail here]</i> ;

<b>"Project Agreement Termination Notice"</b>	any notice served by the Supplier or the Authority under the terms of the Project Agreement (or other act or omission evidenced in writing) which evinces an intention by that party to terminate, rescind or repudiate the Project Agreement;
<b>"Proposed Assignment Notice"</b>	has the meaning given to it in clause 5.1;
<b>"Proposed Substitute"</b>	a company or other legal entity (other than the Authority) mentioned in a Proposed Assignment Notice;
<b>"Services"</b>	the technical Support and Maintenance services to be provided by the Sub-Contractor as set out in the SubContract;
<b>"Sub-Contract"</b>	the agreement dated on or about the date hereof between the Supplier and the Sub-Contractor pursuant to which the Sub-Contractor agrees to provide the Services.
<b>"Step Out Date"</b>	the date set out in the notice referred to in clause 4.7 (or, if the Parties agree some other date, that date);

## 1.2 Interpretation

In this Agreement (unless the context otherwise requires or save as expressly defined or provided):

- 1.2.1 where words and expressions appear in capitalised terms and not otherwise defined herein, those words and expressions have the same meaning as in the Project Agreement.
- 1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.3 all references to clauses are references to clauses of this Agreement;
- 1.2.4 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, assigned or assigned from time to time;
- 1.2.5 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;

- 1.2.6 any reference to time of day shall be a reference to London time;
- 1.2.7 the words “**herein**”, “**hereto**” and “**hereunder**” refer to this Agreement as a whole and not to the particular clause in which such word may be used;
- 1.2.8 words importing the singular include the plural and vice versa;
- 1.2.9 words importing a particular gender include all genders;
- 1.2.10 “**person**” includes any individual, partnership, firm, authority, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- 1.2.11 “**Working Days**” means Monday to Friday excluding English public holidays;
- 1.2.12 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.13 references to “**Party**” means a party to this Agreement and references to “**Parties**” shall be construed accordingly;
- 1.2.14 all monetary amounts are expressed in pounds sterling;
- 1.2.15 references to the word “**includes**” or “**including**” are to be construed without limitation; and
- 1.2.16 the obligations of any Party under this Agreement are to be performed at that party's own cost and expense.

## 2. **SUB-CONTRACTOR WARRANTY AND UNDERTAKING**

2.1 The Sub-Contractor warrants and undertakes to the Authority that:

- 2.1.1 it has complied with and fulfilled; and 2.1.2 it shall continue to comply with and fulfil, all of its obligations arising under or by virtue of the Sub-Contract.

The Authority shall only be entitled to make a claim against the SubContractor under this clause 2.1 if the Project Agreement has terminated.

2.2 The obligations of the Sub-Contractor under or pursuant to clause 2.1 are in addition to and without prejudice to any other present or future liability of the Sub-Contractor to the Authority (including, without prejudice to the generality of the foregoing, any liability in negligence or any other liability under this Agreement) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Authority by any person nor by any

action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Authority.

2.3 Notwithstanding any provision to the contrary in the Sub-Contract (or any other agreement to which the Authority is not a party), and other than where the Sub-Contract terminates or expires by (i) effluxion of time in accordance with the Sub-Contract or (ii) at the election of the Supplier, no act or omission of the Sub-Contractor will be effective to terminate, rescind or repudiate the Sub-Contract until the expiry of the Authority's Step In Period or, if the Extended Period has arisen, that termination, rescission or repudiation is in accordance with clause 4.4.

2.4 If at any time the Sub-Contractor becomes entitled to terminate the SubContract in accordance with its terms then prior to taking any action to terminate the Sub-Contract it shall serve on the Authority written notice of its intention to terminate.

### 3. **STEP IN**

3.1 If:

3.1.1 the Authority Step In Period has arisen; or

3.1.2 the Supplier has served a Project Agreement Termination Notice on the Authority,

the Authority may give written notice to the Supplier and the Sub-Contractor that the Authority will require the Sub-Contractor to:

3.1.3 provide the Continuing Services for the Extended Period but for a period no longer than that contemplated under the Sub-Contract; or

3.1.4 effect, within the period reasonably specified by the Authority an orderly handover (to the Authority or to another party (not being a competitor of Sub-Contractor) if the Authority so directs) of the Services pursuant to the provisions of clause 5.3.

3.2 The Authority must give notice in accordance with clause 3.1 above either within the Authority's Step-In Period or within 3 months of the date of receipt of the Supplier's Project Agreement Termination Notice (as appropriate).

### 4. **THE CONTINUING SERVICES AND THE EXTENDED PERIOD**

4.1 In consideration for the Sub-Contractor providing the Continuing Services for the Extended Period (on the same terms and conditions, as the context shall admit, as set out in the Sub -Contract), the Authority shall pay to the SubContractor:

4.1.1 the Fee, on the basis (where applicable) set out in the Sub -Contract; and

- 4.1.2 in the case where the terms and conditions of the Sub-Contract have been amended under clause 4.2 below, any further costs, expenses and amounts as the Parties shall agree.
- 4.2 The Authority and the Sub-Contractor may, by agreement, amend the terms of the Sub-Contract to properly reflect the Fee to be paid and the Continuing Services to be provided throughout the Extended Period (or any other relevant matters). If that agreement is so amended all references in this Agreement to the Fee and the Sub-Contract shall be construed accordingly.
- 4.3 During the Extended Period, the Sub-Contractor shall only be entitled to terminate, rescind or repudiate the Sub-Contract if the Authority:
- 4.3.1 commits a material breach under the Sub-Contract and fails to remedy such breach within 1 months of notification in writing by the Sub-Contractor of such non-payment; or
- 4.3.2 fails to perform or discharge when falling due the performance or discharge of any obligation under the Sub-Contract the non-performance or discharge of which would give or would have given rise to a right of termination under the Sub -Contract.
- provided that, in any event, all of the acts or omissions constituting the relevant default first arose after the Operative Date and in relation to clause 4.3.2 above:
- 4.3.3 if the breach is remediable, it has not been remedied within the period set out in clause 4.3.4; and
- 4.3.4 the Sub-Contractor has properly served notice of the same (setting out reasonable details thereof) on the Authority and 30 days have elapsed since the service of that notice.
- 4.4 The Authority shall, if it exercises its rights under clause 3 be responsible for all duties, obligations and liabilities of the Supplier to the Sub-Contractor under the Sub-Contract relating to the Continuing Services from the Operative Date.
- 4.5 The Sub-Contractor shall, if the Authority exercises its rights under clause 3, owe all of its duties, obligations and liabilities under the Sub-Contract to the Authority from the Operative Date.
- 4.6 The Supplier shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Sub-Contract notwithstanding:-
- 4.6.1 the service of any notice under clause 3 or the expiry of the Step In Period; or
- 4.6.2 any other provision of this Agreement.
- 4.7 The Authority may, at any time during the Extended Period, give the SubContractor 60 Working Days prior written notice of the termination of the same.

4.8 The Authority shall be released from all continuing obligations and liabilities with respect to the provision of the Continuing Services on the Step Out Date.

## 5. EXPIRY OF THE EXTENDED PERIOD

5.1 At the expiry of the Extended Period, the provisions of this clause 5 shall apply save where the Sub-Contractor and the Authority agree to continue the provision of the Continuing Services beyond the Extended Period.

5.2 If the Sub-Contractor and the Authority agree to continue the provision of the Continuing Services beyond the Extended Period, such extension shall be upon terms and conditions that shall have applied during the Extended Period, as may be amended by agreement between the Parties (such terms to be no more onerous than the terms and conditions that have applied during the Extended Period).

5.3 The Sub-Contractor shall, subject to reimbursement of its reasonable costs and expenses in relation to the same (save where any termination by the Authority of the Project Agreement is occasioned by a default by the Sub-Contractor under the Sub-Contract whereupon such costs and expenses shall be for the account of the Sub-Contractor) pursuant to clause 3.1.4 or during and following the end of the Extended Period, as the case may be, provide assistance to the Authority with any transitional arrangements that may be required by the Authority to the extent reasonable and necessary to achieve the minimum disruption to the provision of the Services and an orderly handover and the implementation of an alternative to the Continuing Services, whether provided by the Authority or a third party only where that third party has a legal right to provide the Continuing Services as delivered by the Sub-Contractor without the additional grant of rights by Sub-Contractor (or as the Authority shall direct).

## 6. NOVATION AND ASSIGNMENT

6.1 At any time after the Authority Step In Period has arisen or the Supplier has served a Project Agreement Termination Notice and prior to the expiry or termination of the Extended Period the Authority may serve one or more written notices on the Sub-Contractor and the Supplier (a "**Proposed Assignment Notice(s)**") requiring the Supplier's rights and obligations under the Sub-Contract to be assigned either to itself or to a company or other legal entity identified in the Proposed Assignment Notice(s) and approved by the Sub-Contractor in accordance with the provisions of this clause 6. No approval shall be required where the Proposed Substitute is the Authority.

6.2 The Authority shall (as soon as practicable after the service of a Proposed Assignment Notice) supply the Sub-Contractor with such information as the Sub-Contractor reasonably requires to enable it to decide whether to grant such approval, including:

6.2.1 the name and registered address of the Proposed Substitute;

- 6.2.2 the names of the shareholders of the Proposed Substitute and the share capital held by each of them;
  - 6.2.3 the names of the directors and secretary of the Proposed Substitute; and
  - 6.2.4 the resources which are available or to be made available to the Proposed Substitute to enable it to fulfil the obligations of the Supplier under the Sub -Contract.
- 6.3 The approval of the Sub-Contractor must not be unreasonably withheld or delayed where the Proposed Substitute has:
- 6.3.1 the legal capacity, power and authority to become a party to and perform the obligations of the Supplier under the Sub -Contract, including if necessary its ability to maintain in force all necessary authorisations and consents;
  - 6.3.2 sufficient technical resource available to it to enable it to perform the obligations of the Supplier under the Sub -Contract;
  - 6.3.3 sufficient finance available whether from a guarantor or otherwise to enable it to perform the obligations of the Supplier under the Sub Contract.
- 6.4 The Sub-Contractor must notify the Authority in writing within 14 days of the later of receipt of a Proposed Assignment Notice and receipt of the information reasonably required under clause 6.2 whether or not it has decided to grant such approval and, if not, the reasons therefore.
- 6.5 If the Sub-Contractor exercises its right to withhold approval to an assignment, the same shall not prejudice the ability of the Authority to give one or more subsequent Proposed Assignment Notices containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the Authority has good cause to believe would satisfy the Sub-Contractor's requirements in relation to the matters in clause 6.3.
- 6.6 Following the approval of the Proposed Substitute by the Sub-Contractor the Supplier and the Sub-Contractor shall enter into a deed of assignment in the same or substantially the same form as set out in the Schedule (and any other requisite agreements required to effect or make good the arrangements contemplated by the same);

## 7. **ACKNOWLEDGEMENT, RELEASE, ETC**

- 7.1 The Supplier agrees to and acknowledges the provisions of this Agreement and shall not terminate, rescind or repudiate the Sub-Contract without giving 30 days' notice to the Authority, and shall not undertake any such termination in cases whereby the rights of the Authority under this Agreement would be prejudiced. The Supplier shall procure that any replacement or substitute for

the Sub-Contractor enters into an agreement in the same form as this Agreement prior to its appointment.

- 7.2 A Sub-Contract Termination Notice and a notice given under clause 3 may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

## 8. GENERAL

### 8.1 Notice

All notices or communications to be given hereunder shall be deemed to have been duly given or made when delivered by hand; by registered first class post or recorded delivery; by facsimile transmission confirmed by registered first class post or recorded delivery to the party to which such notice or communication is required to be given or made under this Agreement addressed as follows:

8.1.1 if to the Authority at [ADDRESS] and/or to such facsimile transmission number as may be notified to the Supplier and the SubContractor from time to time (for the attention of: *[insert]*);

8.1.2 if to the Supplier at [ADDRESS] and/or to such facsimile transmission number as may be notified to the Authority and the Sub-Contractor from time to time (for the attention of: *[insert]*);

8.1.3 if to the Sub-Contractor at *[insert]* (for the attention of:*[insert]*);

or any such other address and/or facsimile transmission number (and for the attention of such other person) as the respective parties hereto may hereafter specify to the others in writing.

### 8.2 Subject to Clause 8.1

Notices sent in accordance with Clause 8.1 shall be deemed to be served three (3) Working Days following the day of despatch of the notice PROVIDED ALWAYS that if actual acknowledgement (as opposed to an automatic acknowledgement) of receipt is received in relation to a notice sent by facsimile transmission or electronic mail, such notice will be deemed to be served on the date of such acknowledgement of receipt. Notices served by hand will be deemed to be served on the date of actual receipt

### 8.3 Confidentiality

Each Party shall ensure that all Confidential Information which is supplied to it by any other Party or otherwise becomes available to it shall be treated as confidential and that the provisions of clause 15 of the Project Agreement for the Authority and the Supplier and *[insert]* for the Sub-Contractor and Supplier shall be strictly observed.

#### 8.4 **No Announcements**

Except with the written consent of the other Parties, no Party shall make any press announcement relevant to or derived from the subject matter of this Agreement.

#### 8.5 **Costs and Expenses**

Each Party shall be responsible for paying its own costs and expenses in relation to the preparation and execution of this Agreement.

#### 8.6 **Severability**

If any provision of this Agreement shall be or become illegal, invalid or unenforceable in whole or in part, the effectiveness of the remaining provisions of this Agreement shall not be prejudiced or impaired.

#### 8.7 **Amendments**

No amendments to any part of this Agreement shall be binding on either Party unless in writing and insofar as the provisions of the Law of Property (Miscellaneous Provisions) Act 1989 are relevant, in accordance with those provisions.

#### 8.8 **No Waiver**

Any failure of or delay by a Party in relation to the exercise of its rights under this Agreement shall not constitute a waiver of any such rights nor shall any waiver in respect of one act or omission operate as a waiver in respect of any other or future acts or omissions.

#### 8.9 **No Partnership or Agency**

Nothing in this Agreement shall be construed as establishing or implying a partnership or joint venture between Parties nor (except where specifically provided) shall be deemed to constitute any of the Parties as the agent of any of the others or to allow any Party to hold itself out as acting on behalf of the others.

#### 8.10 **Privity**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Parties acknowledge that:

8.10.1 this Agreement is intended and agreed to be for the benefit solely of the Parties and their lawful successors and permitted assigns and is not intended to and does not create or confer any right or benefit enforceable by any other person or third party; and

8.10.2 all or any of the provisions of this Agreement may be rescinded or varied by the Parties as provided in this Agreement in their entirety or

in part without the consent of or the need to give any notice to any person or third party not a Party.

8.11 **Entire Agreement**

This Agreement (when taken together with the Sub-Contract and the Project Agreement) constitutes the whole agreement and understanding of the Authority, the Supplier and the Sub-Contractor as to the subject matter of this Agreement.

8.12 **Fraud and Fraudulent Misrepresentation**

Nothing in this Agreement is intended to, or shall operate so as to, exclude or limit any liability for fraud or fraudulent misrepresentation.

8.13 **Conflict and Priority**

In the event of any inconsistency between this Agreement and the SubContract, this Agreement shall take precedence to the extent of such inconsistency.

#### 8.14 Further Assurance

Each Party shall from time to time at the request of the other Party execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions or the purposes of this Agreement.

#### 8.15 Governing Law and Jurisdiction

This Agreement shall be governed by and interpreted in accordance with law and the Parties submit to the exclusive jurisdiction of the English Courts.

#### 8.16 Counterparts

This Agreement may be executed in one or more counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but all counterparts shall together constitute one and the same instrument.

IN WITNESS whereof the Parties have executed and delivered this document as a Deed the day and year first before written.

[REDACTED]

## SCHEDULE

### Deed of Assignment

**THIS AGREEMENT** is made the            day of [YEAR]

**BETWEEN:**

- (1) **[CONTRACTOR] LIMITED** (Company Registration Number: [NUMBER]), Registered Office: [ADDRESS] (the "**Contractor**");
- (2) **[SUB-CONTRACTOR] LIMITED** (Company Registration Number: [NUMBER]), Registered Office: [ADDRESS] (the "**Sub-Contractor**").
- (3) **[ASSIGNEE] LIMITED** (Company Registration Number: [NUMBER]), Registered Office: [ADDRESS], (the "**Assignee**") (individually, a "**Party**", collectively, the "**Parties**").

**WHEREAS:**

- (A) The Supplier and the Sub-Contractor entered into the Sub-Contract ("**SubContract**").
- (B) The Parties wish to assign all of the Supplier's rights and obligations under the Sub-Contract to the Assignee and for that purpose have determined to enter into this novation agreement.

**NOW IT IS HEREBY AGREED** as follows:

In consideration of the payment of £1 (one pound) by the Sub-Contractor to each of Supplier and the Assignee (receipt of which is hereby acknowledged), the Parties agree as follows:

1. From the date of this agreement the Sub-Contract shall be assigned to the Assignee (the "**Assignment**") and all of the rights and obligations of the Supplier under that agreement shall from that date be rights and obligations of the Assignee subject as follows:
  - 1.1 with effect from the date hereof all of the rights and obligations of the Supplier hereafter arising under the Sub-Contract shall be rights and obligations of the Assignee;
  - 1.2 the Assignment shall be without prejudice to any rights and obligations of the Sub-Contractor arising before the Assignment;
  - 1.3 the Sub-Contract shall continue in full force and effect.

2. This agreement shall be governed by and subject to the laws of England and Wales. The parties submit to the exclusive jurisdiction of courts of England and Wales.

**AS WITNESS** the hands of the Parties or their duly authorised representatives the day and year first above written.

**SIGNED** by ) duly authorised for and on behalf of  
**the** )  
**Supplier** )

**SIGNED** by ) duly authorised for and on behalf of  
**the** )  
**Sub-Contractor.** ))

**SIGNED** by ) duly authorised for and on behalf of  
**the** )  
**Assignee** )

## Schedule 32 (Background Checks)

### 1. When you should use this Schedule

This Schedule should be used where Supplier Staff must be vetted before working on Contract.

### 2. Definitions

“Relevant Conviction” means any conviction listed in Annex 1 to this Schedule.

### 3. Relevant Convictions

3.1.1 The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

3.1.2 Notwithstanding Paragraph 3.1.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant SubContractor must):

- (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 Deliverables any person who has a Relevant Conviction or an inappropriate record.

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Schedule 32 (Background Checks)  
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[REDACTED]

## Annex 1 – Relevant Convictions

[REDACTED]

Mid-Tier Contract

Project Version: v1.0

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Model Version: v1.0

## **Schedule 36 for The Secretary of State for Prisons [Only]**

This Schedule is solely for use by the Ministry of Justice in conjunction with the Secretary of State for the Home Department (Home Office) Contract for Supply and Maintenance of Detection Technology Equipment.

Part 1: Mandatory Security Conditions

Part 2: NOT USED refer to Schedule 16 Part 3:

NOT USED refer to Schedule 16

Part 4: Prisons

1 Access to Prisons

2 Security

3 Offences and Authorisation

4 Health and Safety Rules for Suppliers Working on Prison Premises

5 List of Prohibited and Controlled Items

6 Unauthorised Articles Notice and List

7 Delivery Driver Handbook

[REDACTED]

1.32 .

**PART 2 – NOT USED**

[REDACTED]

**PART 3 – NOT USED**

[REDACTED]

## **PART 4 - PRISONS**

### **1. ACCESS TO PRISONS**

[REDACTED]

