

**(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**(2) COONEEN PROTECTION LTD**

**BODY ARMOUR**

**Contract Ref: RM3709**

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This agreement is made on **09/02/2015**.

**BETWEEN:**

- (1) The Secretary of State for the Home Department, with offices at 3<sup>rd</sup> Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, (the "**Authority**");
- (2) **Cooneen Protection Ltd** which is a company registered in the **United Kingdom** under company number **NI045980** and whose registered office is at **23 Cooneen Road, Fivemiletown, Tyrone BT75 0NE** (the "**Supplier**").

**RECITALS:**

- A The Authority placed a contract notice **2014/S 180-317199** on **29/10/2014** (the "**OJEU Notice**") in the Official Journal of the European Union seeking tenders from providers of Body Armour interested in entering into a contract for the supply of such Goods and Services to the Authority.
- B On **29/10/2014** the Authority issued an invitation to tender (the "Invitation to Tender") for the provision of Body Armour.
- C In response to the Invitation to Tender, the Supplier submitted the Tender to the Authority on or before **14/11/2014** through which it represented to the Authority that it is capable of delivering the Goods and Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Goods and Services in an efficient and cost effective manner.
- D On the basis of the Tender, the Authority selected the Supplier to enter into an agreement to provide the Goods and Services to the Authority from time to time in accordance with this Contract.

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

- 1.2.6 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;
- 1.2.7 references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under this Contract;
- 1.2.8 references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
- 1.2.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 In the event of and only to the extent of any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.3.1 the Clauses;
  - 1.3.2 the Schedules (except Schedule 16 (Tender));
  - 1.3.3 Schedule 16 (Tender).

## **2. DUE DILIGENCE**

- 2.1 The Supplier acknowledges that:
  - 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
  - 2.1.3 it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
  - 2.1.4 has entered into this Contract in reliance on its own due diligence alone.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
  - 2.2.1 any misinterpretation of the requirements of the Authority in this Contract; and/or
  - 2.2.2 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

## **3. REPRESENTATIONS AND WARRANTIES**

- 3.1 Each Party represents and warranties that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
  - 3.1.2 this Contract is executed by its duly authorised representative;
  - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
  - 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Contract;
  - 3.2.3 its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
  - 3.2.4 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation, its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
  - 3.2.5 as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
  - 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Goods and/or Services by the Authority;
  - 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
  - 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

- 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 3.2.10 for the Contract Period and for a period of twelve (12) months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of the Authority, which shall not be unreasonably withheld;
- 3.2.11 the Goods shall conform in all respects with any sample approved by the Authority in the absence of a sample, all Goods supplied shall be within the normal limits of industrial quality;
- 3.2.12 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own internal procedures;
- 3.2.13 the Goods shall operate in accordance with the relevant technical specifications and shall correspond with the requirements of the Specification and with any particulars specified in this Contract;
- 3.2.14 the Goods shall be free from defects in design, material and workmanship and be fit and sufficient for all the purposes for which such Goods are ordinarily used for any particular purpose made known to the Supplier by the Authority; and
- 3.2.15 all obligation of the Supplier pursuant to the Contract shall be performed by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.

#### **4. NOT USED**

### **B. DURATION OF CONTRACT**

#### **5. CONTRACT PERIOD**

- 5.1 This Contract shall take effect on the Commencement Date and shall expire either:



- 5.1.1 at the end of the Initial Period; or
  - 5.1.2 where the Authority elects to extend the Initial Period in accordance with Clause **Error! Reference source not found.** below, at the end of the Extension Period,
  - 5.1.3 unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law.
- 5.2 The Authority may elect to extend the duration of this Contract for the Extension Period from the expiry of the Initial Period Term for a maximum of two (2) consecutive further terms, each of these further terms being up to twelve (12) months duration (each of these further terms referred to as the “Extension Period”) by giving the Supplier no less than one (1) Months' written notice prior to the end of the Initial Term and following this, one (1) Month's written notice prior to the end of the first Extension Period.

## **C. CONTRACT PERFORMANCE**

### **6. IMPLEMENTATION PLAN**

#### **6.1 Implementation Plan**

- 6.1.1 The Supplier shall provide the Authority with an Implementation Plan which shall be agreed between the Parties immediately following award of Contract.
- 6.1.2 The Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Authority may require. The draft implementation plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.

#### **6.2 NOT USED**

### **7. GOODS AND SERVICES**

#### **7.1 Provision of the Goods and Services**

- 7.1.1 The Supplier acknowledges and agrees that the Authority relies on the skill and judgment of the Supplier in the provision of the Goods and Services and the performance of its obligations under this Contract.
- 7.1.2 The Supplier shall ensure that the Goods and Services:
  - (a) comply in all respects with the Authority's description of the Goods and Services in Schedule 2 (Goods and Services) or elsewhere in this Contract; and
  - (b) are supplied in accordance with the provisions of this Contract including the Tender.
- 7.1.3 The Supplier shall perform its obligations under this Contract in accordance with:
  - (a) all applicable Law;
  - (b) Good Industry Practice;
  - (c) the Standards; and
  - (d) NOT USED

- (e) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to **Error! Reference source not found..**

7.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Goods and Services in accordance with this Contract;
- (b) subject to Clause 22.1 (Variation Procedure), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and Services;
- (c) ensure that any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Goods and Services shall enable the Deliverables and/or Goods and Services to meet the requirements of the Authority;
- (d) the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority); and
- (e) the Goods and Services are fully compatible with any Authority Property or Authority Assets used by the Supplier in connection with this Contract;
- (f) minimise any disruption to the Sites and/or the Authority's operations when providing the Goods and Services;
- (g) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and/or Services to any Other Supplier and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Goods and/or Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (i) assign to the Authority, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Goods and/or Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (j) provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Goods and Services;
- (k) deliver the Goods and Services in a proportionate and efficient manner;

- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract; and
- (m) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract.

7.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

## **8. SERVICES**

### **8.1 Time of Delivery of the Services**

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

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

8.2.1 Except where otherwise provided in this Contract, the Supplier shall provide the Services to the Authority through the Supplier Personnel at the Sites.

8.2.2 The Authority may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Authority Premises, the Authority may carry out such inspection and examination during normal business hours and on reasonable notice.

### **8.3 Undelivered Services**

8.3.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Goods and Services), 8.1 (Time of Delivery of the Services) and 8.2 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

8.3.2 The Authority may, at its discretion and without prejudice to any other rights and remedies of the Authority howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Goods and Services), 8.1 (Time of Delivery of the Services) and 8.2 (Location and Manner of Delivery of the Services) to be a material Default.

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

8.4.1 Subject to Clauses 33.9.2 and 33.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clauses 8.3.2 (Undelivered Services) and 38 (Authority Remedies for Default)), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in Clauses 7.1 and 8 within seven (7) Working Days of becoming aware of the relevant Default or being notified of the Default by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work.

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

- 8.5.1 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by the Authority to pay any Contract Charges,
  - (d) unless the Supplier is entitled to terminate this Contract under Clause 42.1 (Termination on Authority Cause for Failure to Pay) for failure by the Authority to pay undisputed Contract Charges.

## **9. GOODS**

### **9.1 Time of Delivery of the Goods**

- 9.1.1 The Supplier shall provide the Goods on the date(s) specified in this Contract or as otherwise agreed by the Authority in writing.
- 9.1.2 Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle and transferred at the Sites. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- 9.1.3 Time of delivery shall be of the essence and failure to deliver within the time specified shall enable the Authority (at the Authority's discretion) to release itself from any obligation to accept and pay for the Goods and / or cancel all or part of the Contract, in either case without prejudice to other rights and remedies.

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

- 9.2.1 Except where otherwise provided in this Contract, the Supplier shall deliver the Goods to the Authority through the Supplier Personnel at the Sites.
- 9.2.2 If requested by the Authority prior to Delivery, the Supplier shall provide the Authority with a sample or samples of Goods for evaluation and Approval, at the Supplier's cost and expense, and all subsequent deliveries of the Goods shall be equal to or better than approved samples in terms of quality and shall not differ from the sample in any material respect.
- 9.2.3 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Authority's instructions as set out in

Schedule 2 (Goods and Services), Good Industry Practice, any applicable Standards and any Law. In particular, the Goods shall be marked with the order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

9.2.4 On dispatch of any consignment of the Goods the Supplier shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.

9.2.5 The Authority may inspect and examine the manner in which the Supplier supplies the Goods at the Sites and, if the Sites are not the Authority Premises, the Authority may carry out such inspection and examination during normal business hours and on reasonable notice.

### **9.3 Undelivered Goods**

9.3.1 In the event that not all of the Goods are Delivered in accordance with Clauses 7.1 (Provision of the Goods and Services), 9.1 (Time of Delivery of the Goods) and 9.2 (Location and Manner of Delivery of the Goods) ("**Undelivered Goods**"), the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Contract Charges for the Goods that were not so Delivered until such time as the Undelivered Goods are Delivered.

9.3.2 The Authority may, at its discretion and without prejudice to any other rights and remedies of the Authority howsoever arising, deem the failure to comply with Clauses 7.1 (Provision of the Goods), 9.1 (Time of Delivery of the Goods) and 9.2 (Location and Manner of Delivery of the Goods) and meet the relevant Milestone Date (if any) to be a material Default.

### **9.4 Over-Delivered Goods**

9.4.1 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in Schedule 2 (Goods and Services) (or elsewhere in this Contract) ("**Over-Delivered Goods**").

9.4.2 If the Authority elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Authority howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Authority any expenses incurred by the Authority as a result of such Over-Delivered Goods (including but not limited to the costs of moving and storing the Over-Delivered Goods).

9.4.3 If the Supplier fails to comply with the Authority's notice under Clause 9.4.2, the Authority may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

### **9.5 Delivery of the Goods by Instalments**

9.5.1 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery of the Goods by instalments. If, however, the

Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Authority howsoever arising, entitle the Authority to terminate the whole or any unfulfilled part of this Contract for material Default without further liability to the Authority.

#### **9.6 Risk and Ownership in Relation to the Goods**

- 9.6.1 Without prejudice to any other rights or remedies of the Authority howsoever arising:
- (a) risk in the Goods shall pass to the Authority at the time of acceptance of Delivery; and
  - (b) ownership of the Goods shall pass to the Authority on the earlier of acceptance of Delivery of the Goods or payment by the Authority of the Contract Charges.

#### **9.7 Responsibility for Damage to or Loss of the Goods**

- 9.7.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Contract, the Supplier accepts responsibility for all damage to or loss of the Goods, including damage in transit, if the:
- (a) same is notified in writing to the Supplier within forty eight (48) hours of receipt and inspection of the Goods by the Authority; and
  - (b) Goods have been handled by the Authority in accordance with the Supplier's instructions.
- 9.7.2 The Authority reserves the right to reject a consignment where damage in transit is immediately evident.
- 9.7.3 Where the Supplier accepts responsibility under Clause 9.7.1, it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Authority.

#### **9.8 Warranty of the Goods, Inspection and Rejection**

- 9.8.1 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.
- 9.8.2 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods regardless of the wording on the receipt note.
- 9.8.3 If the Authority shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Authority howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Authority shall elect) free of charge.
- 9.8.4 The Supplier shall permit the Authority or authorised representatives to make any inspections or tests which may reasonably be required and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the

time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods.

- (a) The Authority may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods concerned. If the Authority shall reject any of the Goods pursuant to this Clause 9, the Authority shall be entitled (without prejudice to other rights and remedies) either:
  - (i) to have the Goods concerned as quickly as possible and in any event within 7 days either repaired by the Contractor or (as the Authority shall elect) replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - (ii) to treat the Contract as discharged by the Contractor's breach and require a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by the Authority in obtaining other goods in replacement.
- (b) Any Goods rejected or returned by the Authority as described in Clause 9.8.3 shall be returned to the Supplier at the Supplier's risk and expense.

## **9.9 Obligation to Remedy Default in the Supply of the Goods**

- 9.9.1 Subject to Clauses 33.9.2 and 33.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clauses 9.3.2 (Undelivered Goods) and 38 (Authority Remedies for Default)), the Supplier shall, where practicable:
  - (a) remedy any breach of its obligations in this Clause 9 within seven (7) Working Days of becoming aware of the relevant Default or being notified of the Default by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and
  - (b) meet all the costs of, and incidental to, the performance of such remedial work.

## **9.10 Continuing Obligation to Provide the Goods**

- 9.10.1 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Goods, notwithstanding:
  - (a) any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;
  - (b) the existence of an unresolved Dispute; and/or

- (c) any failure by the Authority to pay any Contract Charges, unless the Supplier is entitled to terminate this Contract under Clause 42.1 (Termination on Authority Cause for Failure to Pay) for failure to pay undisputed Contract Charges.

## **10. NOT USED**

## **11. STANDARDS AND QUALITY**

- 11.1 The Supplier shall at all times during the Contract Period comply with the Standards and Schedule 7 (Standards) and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 11.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Authority, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Schedule 7 (Standards) shall, in addition, require the Approval of the Authority.
- 11.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt of the Goods and/or Services is explained to the Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 11.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval and shall be implemented within an agreed timescale.
- 11.5 Where a standard, policy or document is referred to in Schedule 7 (Standards) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

## **12. NOT USED**

## **13. SERVICE LEVELS AND SERVICE CREDITS**

- 13.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 13.2 The Supplier shall at all times during the Contract Period provide the Goods and Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 13.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and that it shall without prejudice to any other of its rights howsoever arising entitle the Authority to the rights set out in the provisions of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.



13.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to meet any Service Level Performance Measure.

13.5 NOT USED.

13.6 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Contract Charges as a result of such changes, provided that:

13.6.1 the total number of Service Level Performance Criteria does not exceed ten (10); and

13.6.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards.

13.6.3 NOT USED.

#### **14.NOT USED**

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

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

#### **16.DISRUPTION**

16.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

16.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.

16.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and Services in accordance with its obligations under this Contract.

16.4 If the Supplier's proposals referred to in Clause 16.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may terminate this Contract for material Default.

16.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely caused by the Authority, an appropriate allowance by way of an extension of time will be Approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

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

17.1 Without prejudice to any other obligations of the Supplier in this Contract to notify the Authority in respect of a specific Authority Cause (including the notice requirements under Clause 42.1.1 (Termination on Authority Cause for Failure to

Pay)), the Supplier shall notify the Authority as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that a Authority Cause has occurred or is reasonably likely to occur, giving details of:

- 17.1.1 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract; and
- 17.1.2 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 17.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## **18.CONTINUOUS IMPROVEMENT**

- 18.1 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the provision of the Goods and Services in accordance with this Clause 18 with a view to reducing the Authority's costs (including the Contract Charges) and/or improving the quality and efficiency of the Goods and Services and their supply to the Authority. As part of this obligation the Supplier shall identify and report to the Authority once every twelve (12) months:
  - 18.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Goods and Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
  - 18.1.2 new or potential improvements to the provision of the Goods and Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Goods and Services;
  - 18.1.3 changes to the Sites, business processes and ways of working that would enable the Goods and Services to be provided at lower costs and/or at greater benefits to the Authority; and/or
  - 18.1.4 changes to the Sites, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Goods and Services.
- 18.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 18.3 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Authority.

## **D. CONTRACT GOVERNANCE**

### **19.PERFORMANCE MONITORING**

- 19.1 Unless otherwise Approved or notified by the Authority, the Supplier shall comply with the monitoring requirements set out in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 19.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Goods and Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. Unless the Authority specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.

## **20.REPRESENTATIVES**

- 20.1 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 20.2 The initial Supplier Representative shall be the person notified to the Authority in writing by the Supplier within (5) Working Days of the Commencement Date. Any change to the Supplier Representative shall be agreed in accordance with Clause 27 (Supplier Personnel).
- 20.3 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Commencement Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

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

- 21.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Goods and Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
- 21.2 The Supplier shall:
- 21.2.1 keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law; and
  - 21.2.2 afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 21.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including for the following purposes to:
    - (a) verify the accuracy of the Contract Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract);
    - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Goods and/or Services;

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

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

- 21.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 21.4.1 all reasonable information requested by the Authority within the scope of the audit;
  - 21.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods and Services; and
  - 21.4.3 access to the Supplier Personnel.
- 21.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 21, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

## **22.CHANGE**

### **22.1 Variation Procedure**

- 22.1.1 Subject to the provisions of this Clause 22 and of Schedule 3 (Contract Charges, Payment and Invoicing), either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.
- 22.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 22.1.3 The Authority may require the Supplier to carry out an impact assessment of the Variation on the Goods and/or Services (the **"Impact Assessment"**). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Goods and/or Services and the Supplier's ability to meet its other obligations under this Contract;
  - (b) details of the cost of implementing the proposed Variation;
  - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - (e) such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 22.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.

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

22.1.6 In the event that:

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

the Authority may:

- (i) agree to continue to perform its obligations under this Contract without the Variation; or
- (ii) terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Goods and/or Services ordered in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Goods and/or Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

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

## **22.2 Legislative Change**

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

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

22.2.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 22.2.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including:
  - (i) whether any Variation is required to the provision of the Goods and/or Services, the Contract Charges or this Contract; and
  - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Authority with evidence:

- (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and Services; and
  - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 18 (Continuous Improvement), has been taken into account in amending the Contract Charges.
- 22.2.3 Any change in the Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 22.2.1(b)) shall be implemented in accordance with the Variation Procedure.

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

### **23.CONTRACT CHARGES AND PAYMENT**

#### **23.1 Contract Charges**

- 23.1.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Goods and/or Services, the Authority shall pay the undisputed Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Schedule 3 (Contract Charges, Payment and Invoicing).
- 23.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 21 (Records, Audit Access and Open Book Data), 34.5 (Freedom of Information), 34.6 (Protection of Personal Data).
- 23.1.3 If the Authority fails to pay any undisputed Contract Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### **23.2 VAT**

- 23.2.1 The Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.
- 23.2.2 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 23.2 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

#### **23.3 Retention and Set Off**

- 23.3.1 The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 23.3.2 If the Authority wishes to exercise its right pursuant to Clause 23.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Contract Charges.
- 23.3.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

#### **23.4 Foreign Currency**

- 23.4.1 Any requirement of Law to account for the Goods and/or Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Authority.
- 23.4.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause 23.4.1 by the Supplier.

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

- 23.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
  - (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and/or Services by the Supplier or any Supplier Personnel.
- 23.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Schedule 1 (Definitions), and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:
  - (a) that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
  - (b) that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;



- (c) that the Authority may, at any time during the Contract Period, request that the Worker provide information which demonstrates how the Worker complies with the above requirements (a) and (b), or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;
- (d) that the Worker's contract may be terminated at the Authority's request if:
  - (i) the Worker fails to provide information requested by the Authority within the time specified by the Authority; and/or
  - (ii) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with requirements (a) or (b) or confirms that the Worker is not complying with those requirements; and
- (e) That the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **24.PROMOTING TAX COMPLIANCE**

- 24.1 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 24.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - 24.1.2 promptly provide to the Authority:
    - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 24.2 In the event that the Supplier fails to comply with this Clause 24 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.

## **25.BENCHMARKING**

- 25.1 Notwithstanding the Supplier's obligations under Clause 18 (Continuous Improvement), the Authority shall be entitled to regularly benchmark the Contract Charges and level of performance by the Supplier of the supply of the Goods and/or Services, against other suppliers providing goods and/or services substantially the same as the Goods and Services during the Contract Period.
- 25.2 The Authority, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 25.1 above.

- 25.3 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Authority in order to undertake the benchmarking and such information requirements shall be at the discretion of the Authority.
- 25.4 Where, as a consequence of any benchmarking carried out by the Authority, the Authority decides improvements to the Goods and Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Authority.

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

### **26. NOT USED**

### **27. SUPPLIER PERSONNEL**

#### **27.1 Supplier Personnel**

##### **27.1.1 The Supplier shall:**

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

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

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

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

## **27.2 Relevant Convictions**

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

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

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

## **28. NOT USED**

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

### **29.1 Appointment of Sub-Contractors**

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

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

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

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Goods and Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the

Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.

29.1.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 29.1.2, the Supplier shall also provide:

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

29.1.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 29.1.2 (or, if later, receipt of any further information requested pursuant to Clause 29.1.3), object to the appointment of the relevant Sub-Contractor if they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and Services or may be contrary to the interests respectively of the Authority under this Contract;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Sub-Contractor employs unfit persons,

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

29.1.5 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause 29.1.2; and
  - (ii) any further information requested by the Authority pursuant to Clause 29.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority in accordance with Clause 29.2 (Appointment of Key Sub-Contractors),

the Supplier may proceed with the proposed appointment.

## **29.2 Appointment of Key Sub-Contractors**

29.2.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Schedule 17 (Key Sub-Contractors).

29.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority (the decision to consent or not will to be unreasonably withheld or delayed). The Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

- 29.2.3 The Supplier shall provide the Authority with the following information in respect of the proposed Key Sub-Contractor:
- (a) the Key Sub-Contract price expressed as a percentage of the total projected Contract Charges over the Contract Period; and
  - (b) the credit rating of the Key Sub-Contractor as provided by Experian.
- 29.2.4 Except where the Authority has given its prior written consent under Clause 29.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
  - (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
  - (c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;
  - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority or any Replacement Supplier;
  - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
    - (i) data protection requirements set out in Clauses 34.2 (Protection of Authority Data) and 34.6 (Protection of Personal Data);
    - (ii) FOIA requirements set out in Clause 34.5 (Freedom of Information);
    - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 7.1.4(l) (Provision of Services);
    - (iv) 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
    - (v) the conduct of audits set out in Clause 21 (Records, Audit Access & Open Book Data);
  - (f) 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 Authority under Clauses 41 (Authority Termination Rights), 43 (Termination by Either Party) and 45 (Consequences of Expiry or Termination) of this Contract;
  - (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;
  - (h) a provision, where a provision in Schedule 11 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Authority,

Former Supplier or the Replacement Supplier as the case may be.

### **29.3 Supply Chain Protection**

- 29.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:
- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice; and
  - (b) a right for the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 29.3.2 The Supplier shall:
- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
  - (b) include within the Performance Monitoring Reports required under Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 29.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
- 29.3.3 Notwithstanding any provision of Clauses 34.3 (Confidentiality) and 35 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

### **29.4 Termination of Sub-Contracts**

- 29.4.1 The Authority may require the Supplier to terminate:
- (a) a Sub-Contract where:
    - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 41 (Authority Termination Rights) except Clause 41.5 (Termination Without Cause); and/or
    - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
  - (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
    - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

- (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

## **29.5 Competitive Terms**

- 29.5.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Authority may:
  - (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
  - (b) subject to Clause 29.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 29.5.2 If the Authority exercises the option pursuant to Clause 29.5.1, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 29.5.3 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
  - (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and
  - (b) any reduction in the Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

## **29.6 Retention of Legal Obligations**

- 29.6.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 29 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## **G. PROPERTY MATTERS**

### **30.AUTHORITY PREMISES**

#### **30.1 Licence to occupy Authority Premises**

- 30.1.1 Any Authority Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Authority Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract.
- 30.1.2 The Supplier shall limit access to the Authority Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and

ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Authority Premises as the Authority may reasonably request.

- 30.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2(Due Diligence), should the Supplier require modifications to the Authority Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake any modification work which it approves pursuant to this Clause 30.1.3 without undue delay. Ownership of such modifications shall rest with the Authority.
- 30.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Authority Premises and conduct of personnel at the Authority Premises as determined by the Authority, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 30.1.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any Authority Premises in any manner it sees fit.

## **30.2 NOT USED**

### **31.AUTHORITY PROPERTY**

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



and/or Services, in accordance with the Authority's security policy and the Authority's reasonable security requirements from time to time.

- 31.7 The Supplier shall be liable for all loss of, or damage to the Authority Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Authority Cause. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in or losses or damage occurring to the Authority Property.

## **32.SUPPLIER EQUIPMENT**

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

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

### **33.INTELLECTUAL PROPERTY RIGHTS**

### **33.1 Allocation of title to IPR**

- 33.1.1 Save as expressly granted elsewhere under this Contract:
- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
    - (i) the Supplier Background IPR;
    - (ii) the Third Party IPR; and
    - (iii) the Project Specific IPR.
  - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:
    - (i) Authority Background IPR; and
    - (ii) Authority Data.
- 33.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 33.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 33.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

### **33.2 Licences granted by the Supplier: Project Specific IPR**

- 33.2.1 The Supplier hereby grants to the Authority, or shall procure the direct grant to the Authority of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.

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

- 33.3.1 The Supplier hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Goods and/or Services (or substantially equivalent goods and services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.
- 33.3.2 At any time during the Contract Period or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 33.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Authority Cause which constitutes a material breach of the terms of Clauses 33.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
- 33.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 33.3.2, the Authority shall:
- (a) immediately cease all use of the Supplier Background IPR;

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

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

- 33.4.1 The Authority shall be freely entitled to sub-license the rights granted to it pursuant to Clause 33.2.1 (Licences granted by the Supplier: Project Specific IPR).
- 33.4.2 The Authority may sub-license:
  - (a) the rights granted under Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
    - (i) the sub-license is on terms no broader than those granted to the Authority; and
    - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) for purposes relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function; and
  - (b) the rights granted under Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Authority.

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

- 33.5.1 The Authority:
  - (a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 33.2.1 (Licences granted by the Supplier: Project Specific IPR); and
  - (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) to:
    - (i) a Central Government Body; or
    - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities

that previously had been performed and/or carried on by the Authority.

- (c) Where the Authority is a Central Government Body, any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 33.2.1 (Licences granted by the Supplier: Project Specific IPR) and/or Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 33.2.1 (Licences granted by the Supplier: Project Specific IPR) and Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR).
- (d) If a licence granted in Clause 33.2.1 (Licences granted by the Supplier: Project Specific IPR) and/or Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) is novated under Clause 33.5.1(b) or there is a change of the Authority's status pursuant to Clause 33.5.1(c) (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Authority.

### **33.6 Third Party IPR**

- 33.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Authority on terms at least equivalent to those set out in Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) and Clause 33.5.1(b) (Authority's right to assign/novate licences). If the Supplier cannot obtain for the Authority a licence materially in accordance with the licence terms set out in Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) and Clause 33.5.1(b) (Authority's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
  - (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
  - (b) only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.

### **33.7 Licence granted by the Authority**

- 33.7.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority Background IPR and the Authority Data solely to the extent necessary for providing the Goods and/or Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
  - (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 34.3 (Confidentiality); and

- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

### **33.8 Termination of licenses**

- 33.8.1 Subject to Clauses 33.3.2 and/or 33.3.3 (Licences granted by the Supplier: Supplier Background IPR), all licences granted pursuant to this Clause 33 (Intellectual Property Rights) (other than those granted pursuant to Clause 33.6 (Third Party IPR) and 33.7.1 (Licence granted by the Authority)) shall survive the Expiry Date.
- 33.8.2 The Supplier shall, if requested by the Authority, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 33.3.1 (Licences granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 33.8.3 The licence granted pursuant to Clause 33.7.1 (Licence granted by the Authority ) and any sub-licence granted by the Supplier in accordance with Clause 33.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Supplier shall:
  - (a) immediately cease all use of the Authority Background IPR and the Authority Data (as the case may be);
  - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data (as the case may be); and
  - (c) ensure, so far as reasonably practicable, that any Authority Background IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Authority Background IPR and/or Authority Data.

### **33.9 IPR Indemnity**

- 33.9.1 The Supplier shall at during and after the Contract Period, on written demand indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 33.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
  - (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
  - (b) replace or modify the relevant item with non-infringing substitutes provided that:

- (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other Goods and Services;
  - (iii) there is no additional cost to the Authority; and
  - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Goods and Services.
- 33.9.3 If the Supplier elects to procure a licence in accordance with Clause 33.9.2(a) or to modify or replace an item pursuant to Clause 33.9.2(b), but this has not avoided or resolved the IPR Claim, then:
- (i) the Authority may terminate this Contract by written notice with immediate effect; and
  - (ii) without prejudice to the indemnity set out in Clause 33.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute goods and services including the additional costs of procuring, implementing and maintaining the substitute items.

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

### **34.1 NOT USED**

### **34.2 Protection of Authority Data**

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

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

### **34.3 Confidentiality**

- 34.3.1 For the purposes of this Clause 34.3, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 34.3.2 Except to the extent set out in this Clause 34.3 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
  - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
  - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 34.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 34.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
  - (b) the need for such disclosure arises out of or in connection with:

- (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
    - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Goods and/or Services provided under this Contract; or
    - (iii) the conduct of a Central Government Body review in respect of this Contract; or
  - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 34.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 34.3.5 Subject to Clauses 34.3.2 and 34.3.7, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract; and
  - (b) its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 34.3.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 34.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 34.3.7 The Authority may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
  - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
  - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 34.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;



- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 34.3.

- 34.3.8 Nothing in this Clause 34.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 34.3.9 In the event that the Supplier fails to comply with Clauses 34.3.2 to 34.3.5, the Authority reserves the right to terminate this Contract for material Default.

#### **34.4 Transparency**

- 34.4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 34.4.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives his consent for the Authority to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time.
- 34.4.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

#### **34.5 Freedom of Information**

- 34.5.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
  - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

34.5.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### **34.6 Protection of Personal Data**

34.6.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.

34.6.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clause 34.2 (Protection of Authority Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause 34.6.2 and Clauses 34.2 (Protection of Authority Data) and 34.3 (Confidentiality);
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:

- (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 34.6.2(e)), including by promptly providing:
  - (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 34.6.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

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

- (a) the Supplier shall propose a Variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with the Variation Procedure and Clauses 34.6.3(b) to 34.6.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and

- (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
- (c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (d) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (e) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-Contractor relating to the relevant Personal Data transfer, and
  - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

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

### **35.PUBLICITY AND BRANDING**

35.1 The Supplier shall not:

- 35.1.1 make any press announcements or publicise this Contract in any way; or

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

## **I. LIABILITY AND INSURANCE**

### **36. LIABILITY**

#### **36.1 Unlimited Liability**

- 36.1.1 Neither Party excludes or limits its liability for:
  - (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - (b) bribery or Fraud by it or its employees;
  - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) any liability to the extent it cannot be excluded or limited by Law.
- 36.1.2 The Supplier does not exclude or limit its liability in respect of the Indemnity of Clause 33.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the Indemnity therein.

#### **36.2 Financial Limits**

- 36.2.1 Subject to Clause 36.1 (Unlimited Liability), the Supplier's total aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier:
  - (a) in respect of all Defaults resulting in direct loss or damage to the property of the Authority including but not limited to premises, property or assets shall in no event exceed five million pounds [£5,000,000]; and
  - (b) in respect of all other Defaults the annual aggregate liability of the Supplier shall in no event exceed five million pounds [£5,000,000].
- 36.2.2 Subject to Clauses 36.1.1 (Unlimited Liability) and without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Authority's total aggregate liability in respect of all Losses as a result of Authority Causes shall be limited to:

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

### **36.3 Non-recoverable Losses**

36.3.1 Subject to Clause 36.1.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

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

### **36.4 Recoverable Losses**

36.4.1 Subject to Clause 36.2.1 (Financial Limits), and notwithstanding Clause 36.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

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

### **36.5 Miscellaneous**

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

36.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 36.2.1 (Financial Limits).

## **37.INSURANCE**

- 37.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract, and shall procure that Sub-Contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 15 (Insurance Requirements).
- 37.2 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

## **J. REMEDIES AND RELIEF**

### **38.AUTHORITY REMEDIES FOR DEFAULT**

#### **38.1 Remedies**

- 38.1.1 Without prejudice to any other right or remedy of the Authority howsoever arising (including under Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 13.5 (Service Levels and Service Credits), if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:
- (a) at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
  - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods and/or Services comply with this Contract;
  - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
    - (i) instruct the Supplier to comply with the Rectification Plan Process;
    - (ii) suspend this Contract (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods and/or Services;
    - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Goods and/or Services only (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in

to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

- 38.1.2 Where the Authority exercises any of its step-in rights under Clauses 38.1.1(c)(ii) or 38.1.1(c)(iii), the Authority shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Replacement Services.

## **38.2 Rectification Plan Process**

- 38.2.1 Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 38.1.1(c)(i):
- (a) the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within five (5) Working Days (or such other period as may be agreed between the Parties) from the date of Authority's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan.
  - (b) the draft Rectification Plan shall set out:
    - (i) full details of the Default that has occurred, including a root cause analysis;
    - (ii) the actual or anticipated effect of the Default; and
    - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 38.2.2 The Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Schedule 12 (Dispute Resolution Procedure).
- 38.2.3 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to the Authority.
- 38.2.4 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the



preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

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

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

- 39.1 If the Supplier has failed to:

- 39.1.1 Achieve a Milestone by its Milestone date;
- 39.1.2 provide the Goods and/or Services in accordance with the Service Levels;
- 39.1.3 comply with its obligations under this Contract,  
(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Authority Cause, then (subject to the Supplier fulfilling its obligations in Clause 17 (Supplier Notification of Authority Cause)):

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 41 (Authority Termination Rights) except Clause 41.5 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
  - (ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
  - (i) the Supplier shall not be liable to accrue Service Credits;
  - (ii) NOT USED; and
  - (iii) the Supplier shall be entitled to invoice for the Contract Charges for the provision of the relevant Goods and/or Services affected by the Authority Cause,
  - (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Authority Cause.

- 39.2 In order to claim any of the rights and/or relief referred to in Clause 39.1, the Supplier shall:

- 39.2.1 comply with its obligations under Clause 17 (Notification of Authority Cause); and
- 39.2.2 within ten (10) Working Days of becoming aware that a Authority Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:
  - (a) the Supplier Non-Performance;
  - (b) the Authority Cause and its effect on the Supplier’s ability to meet its obligations under this Contract; and
  - (c) the relief claimed by the Supplier.
- 39.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 39.4 Without prejudice to Clauses 8.5 (Continuing obligation to provide the Services) and 9.10 (Continuing obligation to provide the Goods), if a Dispute arises as to:
  - 39.4.1 whether a Supplier Non-Performance would not have occurred but for a Authority Cause; and/or
  - 39.4.2 the nature and/or extent of the relief claimed by the Supplier,either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 39.5 Any Variation that is required to the Implementation Plan or to the Contract Charges pursuant to this Clause 39 shall be implemented in accordance with the Variation Procedure.

#### **40.FORCE MAJEURE**

- 40.1 Subject to the remainder of this Clause 40 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 15 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:
  - 40.3.1 are capable of being mitigated by any of the provision of any Goods and Services including the BCDR Services, but the Supplier has failed to do so; and/or

- 40.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods and/or services similar to the Goods and Services, operating to the standards required by this Contract.
- 40.4 Subject to Clause 40.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and/or Services affected by the Force Majeure Event.
- 40.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 40.6 Where, as a result of a Force Majeure Event:
- 40.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Goods and Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
  - (b) the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;
- 40.6.2 the Supplier fails to perform its obligations in accordance with this Contract:
- (a) the Authority shall not be entitled:
    - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 38.1.1(b) and 38.1.1(c) (Authority Remedies for Default) as a result of such failure; and
    - (ii) to receive Service Credits to the extent that a Service Level Failure has been caused by the Force Majeure Event; and
  - (b) the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Goods and Services (or part of the Goods and Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 40.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 40.8 Relief from liability for the Affected Party under this Clause 40 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 40.7.

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

## **41.AUTHORITY TERMINATION RIGHTS**

### **41.1 Termination on Material Default**

- 41.1.1 The Authority may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- (a) NOT USED
  - (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
  - (c) as a result of any Defaults, the Authority incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses **Error! Reference source not found.** (Liability);
  - (d) the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 8.3.2 (Provision of Services), 9.3.2 and 9.5.1 (Provision of Goods), 16.4 (Disruption), 21.5 (Records, Audit Access and Open Book Data), 24 (Promoting Tax Compliance), 34.3.9 (Confidentiality), 50.6.2 (Prevention of Fraud and Bribery) paragraph 1.2.4 of the Annex to Part A;
  - (e) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
  - (f) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process;
- 41.1.2 For the purpose of Clause 41.1.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

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

- 41.2.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
- (a) adversely impacts on the Supplier's ability to supply the Goods and Services under this Contract; or
  - (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and Services under this Contract.

### **41.3 Termination on Insolvency**

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

#### **41.4 Termination on Change of Control**

41.4.1 The Supplier shall notify the Authority immediately if the Supplier is intending to undergo, undergoes or has undergone a Change of Control and provided this does not contravene any Law, shall notify the Authority immediately in writing of any circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place. The Authority may terminate this Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

#### **41.5 Termination Without Cause**

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

#### **41.6 Termination in Relation to Variation**

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

### **42.SUPPLIER TERMINATION RIGHTS**

#### **42.1 Termination on Authority Cause for Failure to Pay**

42.1.1 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £100,000 and such amount remains outstanding forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Authority of a written notice of non-payment from the Supplier specifying:

- (a) the Authority’s failure to pay; and
- (b) the correct overdue and undisputed sum; and
- (c) the reasons why the undisputed sum is due; and
- (d) the requirement on the Authority to remedy the failure to pay,

this Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under this Contract including Clause 23.3 (Retention and Set off).

- 42.1.2 The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Authority to pay undisputed sums of money (whether in whole or in part).

### **43.TERMINATION BY EITHER PARTY**

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

- 43.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Contract if, in accordance with Clause 40.6.1(a) (Force Majeure).

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

- 44.1 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
- 44.2 Any suspension of this Contract under Clause 44.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 44.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Goods and Services and the Contract Charges, provided that the Supplier shall not be entitled to:
- 44.3.1 an increase in the Contract Charges in respect of the provision of the Goods and Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 41 (Authority Termination Rights) except Clause 41.5 (Termination Without Cause); and
- 44.3.2 reject the Variation.

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

#### **45.1 Consequences of termination under Clauses 41.1 (Termination on Material Default), 41.2 (Termination in Relation to Financial Standing) and 41.6 (Termination in Relation to Variation)**

- 45.1.1 Where the Authority:
- (a) terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 45.1; and
- (b) then makes other arrangements for the supply of the Goods and/or Services,
- the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be

payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

**45.2 Consequences of termination under Clauses 41.5 (Termination without Cause) and 42.1 (Termination on Authority Cause for Failure to Pay)**

45.2.1 Where:

- (a) the Authority terminates (in whole or in part) this Contract under Clause 41.5 (Termination without Cause); or
- (b) the Supplier terminates this Contract pursuant to Clause 42.1 (Termination on Authority Cause for Failure to Pay),

the Authority shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Authority may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 41.5 (Termination without Cause).

45.2.2 The Authority shall not be liable under Clause 45.2.1 to pay any sum which:

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

**45.3 Consequences of termination under Clause 43.1 (Termination for Continuing Force Majeure Event)**

45.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clause 43.1 (Termination for Continuing Force Majeure Event).

**45.4 Consequences of Termination for Any Reason**

45.4.1 Save as otherwise expressly provided in this Contract:

- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 21 (Records, Audit Access & Open Book Data), 33 (Intellectual Property Rights), 34.3 (Confidentiality), 34.5 (Freedom of Information) 34.6 (Protection of Personal Data), 36 (Liability), 45 (Consequences of Expiry or Termination), 51 (Severance), 53 (Entire Agreement), 54 (Third Party Rights) 56 (Dispute Resolution) and 57 (Governing Law and

Jurisdiction), and the provisions of Schedule 1 (Definitions), Schedule 3 (Contract Charges, Payment and Invoicing), Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

#### **45.5 NOT USED**

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

#### **46.COMPLIANCE**

##### **46.1 Health and Safety**

- 46.1.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Goods and/or Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Authority's health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises.
- 46.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract
- 46.1.3 While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Supplier Personnel and other persons working there and any instructions from the Authority on any necessary associated safety measures.

##### **46.2 Equality and Diversity**

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

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

- 46.3.1 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and



(b) section 182 of the Finance Act 1989.

#### **46.4 Environmental Requirements**

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

#### **47.ASSIGNMENT AND NOVATION**

- 47.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract or any part of it without Approval.
- 47.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Contract or any part thereof to:
  - 47.2.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - 47.2.2 any private sector body which substantially performs the functions of the Authority,and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 47.2.
- 47.3 A change in the legal status of the Authority shall not, subject to Clause 47.4 affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.
- 47.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a private sector body in accordance with Clause 47.2.2 (the "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 41.3 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee as if the references to Supplier in Clause 41.3 (Termination on Insolvency) and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee.

#### **48.WAIVER AND CUMULATIVE REMEDIES**

- 48.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clause 55 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 48.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

#### **49.RELATIONSHIP OF THE PARTIES**

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

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

- 50.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- 50.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 50.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 50.2 The Supplier shall not during the Contract Period:
- 50.2.1 commit a Prohibited Act; and/or
  - 50.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 50.3 The Supplier shall during the Contract Period:
- 50.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 50.3.2 keep appropriate records of its compliance with its obligations under Clause 50.3.1 and make such records available to the Authority on request;
  - 50.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
  - 50.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 50.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 50.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 50.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 50.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 50.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 50.5 If the Supplier makes a notification to the Authority pursuant to Clause 50.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Records, Audit Access and Open Book Data).
- 50.6 If the Supplier breaches Clause 50.3, the Authority may by notice:
- 50.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - 50.6.2 immediately terminate this Contract for material Default.
- 50.7 Any notice served by the Authority under Clause 50.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **51.SEVERANCE**

- 51.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 51.2 In the event that any deemed deletion under Clause 51.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 51.3 If the Parties are unable to resolve the Dispute arising under this Clause 51 within twenty (20) Working Days of the date of the notice given pursuant to Clause 51.2, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 51.

## **52.FURTHER ASSURANCES**

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

### 53.ENTIRE AGREEMENT

- 53.1 This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 53.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 53.3 Nothing in this Clause 53 shall exclude any liability in respect of misrepresentations made fraudulently.

### 54.THIRD PARTY RIGHTS

- 54.1 A person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 54.2 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 54.3 Any amendments or modifications to this Contract may be made, and any rights created under Clause **Error! Reference source not found.** may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

### 55.NOTICES

- 55.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of this Clause 55, an e-mail is accepted as being "in writing".
- 55.2 Subject to Clause 55.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 55.3 and 55.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next Working Day	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

service providing proof of delivery	Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	
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55.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 55.2:

55.3.1 any Termination Notice (Clause 41 (Authority Termination Rights)),

55.3.2 any notice in respect of:

(a) partial termination, suspension or partial suspension (Clause 44 (Partial Termination, Suspension and Partial Suspension)),

(b) waiver (Clause 48 (Waiver and Cumulative Remedies))

(c) Default or Authority Cause; and

55.3.3 any Dispute Notice.

55.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 55.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class delivery (as set out in the table in Clause 55.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

55.5 This Clause 55 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

55.6 For the purposes of this Clause 55, the address and email address of each Party shall be

55.6.1 For the Authority:

Address: The Secretary of State for the Home Department

2 Marsham Street, London, SW1 4DP

For the attention of: **[REDACTED]**

55.6.2 For the Supplier:

**Cooneen Protection Ltd**

Address: **23 Cooneen Road, Fivemiletown, Tyrone, BT75 0NE**

For the attention of: **[REDACTED]**

## 56. DISPUTE RESOLUTION

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

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

## **57. GOVERNING LAW AND JURISDICTION**

- 57.1 This Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 57.2 Subject to Clause 56 (Dispute Resolution) and Schedule 12 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

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

Signed duly authorised for and on behalf of the SUPPLIER – Cooneen Protection Ltd

Signature: **[REDACTED]**

Name: **[REDACTED]**

Position: **[REDACTED]**

Date: **[REDACTED]**

Signed for and on behalf of the AUTHORITY

Signature: **[REDACTED]**

Name: **[REDACTED]**

Position: **[REDACTED]**

Date: **[REDACTED]**

## SCHEDULE 1: DEFINITIONS

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

<b>"Achieve"</b>	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and <b>"Achieved"</b> , <b>"Achieving"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Approval"</b>	means the prior written consent of the Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Approved Sub-Licensee"</b>	means any of the following: <ul style="list-style-type: none"><li>a) a Central Government Body;</li><li>b) any third party providing services to a Central Government Body; and/or</li><li>c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;</li></ul>
<b>"Auditor"</b>	means: <ul style="list-style-type: none"><li>a) the Authority's internal and external auditors;</li><li>b) the Authority's statutory or regulatory auditors;</li><li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office</li><li>d) HM Treasury or the Cabinet Office</li><li>e) any party formally appointed by the Authority to carry out audit or similar review functions; and</li><li>f) successors or assigns of any of the above;</li></ul>
<b>"Authority Assets"</b>	means the Authority's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Goods and/or Services;
<b>"Authority Background IPR"</b>	means: <ul style="list-style-type: none"><li>a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in</li></ul>



any of the Authority's Know-How, documentation, processes, software and procedures;

- b) IPRs created by the Authority independently of this Contract; and/or
- c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

**"Authority Cause"**

means any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Authority is liable to the Supplier;

**"Authority Data"**

means:

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

**"Authority Premises"**

means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Sub-Contractors for provision of the Goods and/or Services (or any of them);

**"Authority Property"**

means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Authority in connection with this Contract;

**"Authority Representative"**

means the representative appointed by the Authority from time to time in relation to this Contract;

**"Authority's Confidential Information"**

means:

- a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Authority (including all Authority Background IPR and Project Specific IPR);
- b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Authority's attention or into the Authority's possession in connection with this Contract; and

	information derived from any of the above;
<b>"BCDR Services"</b>	means the Business Continuity Services and Disaster Recovery Services as defined in Schedule 9 (Business Continuity and Disaster Recovery);
<b>"BCDR Plan"</b>	means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 15 (Business Continuity and Disaster Recovery) and Schedule 9 (Business Continuity and Disaster Recovery);
<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Contract which comes into force after the Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with this Contract from time to time;
<b>"Commercially Sensitive Information"</b>	means the Confidential information listed in Schedule 14 (Commercially Sensitive Information) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Contract"</b>	means this agreement between the Authority and the Supplier;
<b>" Contract Charges"</b>	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Authority under this Contract, as set out in Annex 1 of Schedule 3 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;

<b>" Contract Period"</b>	means the term of this Contract from the Commencement Date until the Expiry Date;
<b>" Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
<b>"Control"</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
<b>"Commencement Date"</b>	means <b>09/02/2015</b> ;
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:</p> <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> <li>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 Goods and/or Services (but not including items included within limb (b) below); and</li> <li>ix) reasonable recruitment costs, as agreed with the Authority;</li> </ul> </li> <li>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Authority or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually</li> </ul>

incurred by the Supplier in respect of those Supplier Assets;

- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;

but excluding:

- a) Overhead;
- b) financing or similar costs;
- c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- d) taxation;
- e) fines and penalties;
- f) amounts payable under Clause 25 (Benchmarking); and
- g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**"Crown"**

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**"Crown Body"**

means any department, office or executive agency of the Crown;

**"CRTPA"**

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

**"Data Controller"**

has the meaning given to it in the Data Protection Act 1998, as amended from time to time;

**"Data Processor"**

has the meaning given to it in the Data Protection Act 1998, as amended from time to time;

**"Data Protection Legislation" or "DPA"**

means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

**"Data Subject"**

has the meaning given to it in the Data Protection Act 1998, as amended from time to time;

**"Data Subject Access Request"**

means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

means all Service Credits or any other deduction which the

<b>"Deductions"</b>	Authority is paid or is payable under this Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to abandonment of this Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority;
<b>"Deliverable"</b>	means an item or feature in the supply of the Goods and Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Contract;
<b>"Delivery"</b>	means, in respect of Goods, the time at which the Goods have been delivered and, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed and accepted by the Authority and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disclosing Party"</b>	has the meaning given to it in Clause 34.3.1 (Confidentiality);
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure);
<b>"Documentation"</b>	means all documentation as: <ul style="list-style-type: none"> <li>a) is required to be supplied by the Supplier to the Authority under this Contract;</li> <li>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Goods and/or Services;</li> <li>c) is required by the Supplier in order to provide the Goods and/or Services; and/or</li> <li>d) has been or shall be generated for the purpose of providing the Goods and/or Services;</li> </ul>
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of

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

**"Due Diligence Information"**

means any information supplied to the Supplier by or on behalf of the Authority prior to the Commencement Date;

**"Employee Liabilities"**

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

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

**"Employment Regulations"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended

	or replaced or any other Regulations implementing the Acquired Rights Directive;
"Environmental Information Regulations or EIRs"	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Authority;
"Environmental Policy"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Estimated Year 1 Contract Charges"	means the sum estimated by the Authority to be payable by it to the Supplier as the total aggregate Contract Charges from the Commencement Date until the end of the first Contract Year;
"Expedited Dispute Timetable"	means the timetable set out in paragraph 5 of Schedule 12 (Dispute Resolution Procedure);
" Expiry Date"	means: <ul style="list-style-type: none"> <li>a) the end date of the Initial Period; or</li> <li>b) the end date of any Extension Period;</li> </ul> if this Contract is terminated before the end date of the Initial Period or Extension Period as appropriate, the earlier date of termination of this Contract in accordance with its terms;
"Extension Period"	means such period or periods up to a maximum of two years in total as may be specified by the Authority pursuant to Clause <b>Error! Reference source not found.</b> ;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Supplier of its obligations arising from: <ul style="list-style-type: none"> <li>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;</li> <li>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>c) acts of the Crown, local government or Regulatory Bodies;</li> <li>d) fire, flood or any disaster; and</li> <li>e) an industrial dispute affecting a third party for which a</li> </ul>

substitute third party is not reasonably available but excluding:

- i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and
- ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
- iii) any failure of delay caused by a lack of funds;

**"Force Majeure Notice"**

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

**"Former Supplier"**

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

**"Fraud"**

means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;

**"General Change in Law"**

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

**"Good Industry Practice"**

means 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;

**"Goods"**

means the goods to be provided by the Supplier to the Authority as specified in Annex 2 of Schedule 2 (Goods and Services);

**"Government"**

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**"Halifax Abuse Principle"**

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

**"HMRC"**

means Her Majesty's Revenue and Customs;

**"Holding Company"**

has the meaning given to it in section 1159 of the



	Companies Act 2006;
<b>"Impact Assessment"</b>	has the meaning given to it in Clause 22.1.3 (Variation Procedure);
<b>"Implementation Plan"</b>	means the plan set out in Part A of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel);
<b>"Information"</b>	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
<b>"Initial Period"</b>	means the period from the Commencement Date until its second anniversary;
<b>"Insolvency Event"</b>	means, in respect of the Supplier or Guarantor (as applicable): <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h) where the Supplier or Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> <li>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other</li> </ul>

	jurisdiction;
<b>"Insurances"</b>	shall have the meaning given to it in Paragraph 1.1 of Schedule 15 (Insurances);
<b>"Intellectual Property Rights" or "IPR"</b>	means <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Goods and/or Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract;
<b>"Key Sub-Contract"</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>"Key Sub-Contractor"</b>	means any Sub-Contractor: <ul style="list-style-type: none"> <li>a) listed in Schedule 17 (Key Sub-Contractors);</li> <li>b) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services; and/or</li> <li>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Contract Charges forecast to be payable under this Contract;</li> </ul>
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Commencement Date;
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

<b>"Losses"</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Man Day"</b>	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Milestone"</b>	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
<b>"Milestone Date"</b>	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"Occasion of Tax Non-Compliance"</b>	means: <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;</li> </ul>
<b>"Open Book Data "</b>	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Contract Charges already paid or payable and Contract Charges forecast to be paid during the remainder of this Contract, including details and all assumptions

relating to:

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

**"Other Supplier"**

means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

**"Over-Delivered Goods"**

has the meaning given to it in Clause 9.4.1 (Over-Delivered Goods);

**"Overhead"**

means those amounts which are intended to recover a proportion of the Supplier's or the relevant Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";

**"Parent Company"**

means any company which is the ultimate Holding

	Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
<b>"Party"</b>	means the Authority or the Supplier and <b>"Parties"</b> shall mean both of them;
<b>"Performance Monitoring System"</b>	has the meaning given to it in paragraph 1.1.2 in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Performance Monitoring Reports"</b>	has the meaning given to it in paragraph 3.1 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998;
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means any of the following: <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to: <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> </li> <li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or</li> <li>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li> </ul> </li> </ul>

<b>"Project Specific IPR"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</li> <li>b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;</li> </ul> <p>but shall not include the Supplier Background IPR;</p>
<b>"Recipient"</b>	has the meaning given to it in Clause 34.3.1 (Confidentiality);
<b>"Rectification Plan"</b>	means the rectification plan pursuant to the Rectification Plan Process;
<b>"Rectification Plan Process"</b>	means the process set out in Clause 38.2 (Rectification Plan Process);
<b>"Regulations"</b>	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Related Supplier"</b>	means any person who provides goods and/or services to the Authority which are related to the Goods and/or Services from time to time;
<b>"Relevant Conviction"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) a Conviction that is relevant to the nature of the Goods and Services to be provided; or</li> <li>b) a conviction designated as such specified elsewhere in this Contract;</li> </ul>
<b>"Relevant Requirements"</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Relief Notice"</b>	has the meaning given to it in Clause 39.2.2 (Supplier Relief Due to Authority Cause);
<b>"Replacement Goods"</b>	means any goods which are substantially similar to any of the Goods and which the Authority receives in substitution for any of the Goods following the Expiry Date, whether those goods are provided by the Authority internally and/or by any third party;
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the Expiry Date, whether those services are provided by the Authority internally and/or by any third party;
<b>"Replacement Sub-</b>	means a sub-contractor of the Replacement Supplier to

<b>Contractor"</b>	whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Goods and/or Services for its own account, shall also include the Authority;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Contract or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;
<b>"Restricted Countries"</b>	has the meaning given to it in Clause 34.6.3 (Protection of Personal Data);
<b>"Schedule"</b>	means a schedule to this Contract;
<b>"Security Policy Framework"</b>	the HMG Security Policy Framework;
<b>"Service Credits"</b>	means any service credits specified in Annex 1 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Authority in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Failure"</b>	means an unplanned failure and interruption to the provision of the Goods and Services, reduction in the quality of the provision of the Goods and Services or event which could affect the provision of the Goods and Services in the future;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
<b>"Service Level Performance Criteria"</b>	has the meaning given to it in paragraph 3.2 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Level Performance Measure"</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Levels"</b>	means any service levels applicable to the provision of the Goods and/or Services under this Contract specified in Annex 1 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Period"</b>	has the meaning given to in paragraph 4.1 of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Transfer"</b>	means any transfer of the Goods and Services (or any part of the Goods and/or Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement

	Supplier or a Replacement Sub-Contractor;
<b>"Service Transfer Date"</b>	means the date of a Service Transfer;
<b>"Services"</b>	means the services to be provided by the Supplier to the Authority as referred to Annex A of Schedule 2 (Goods and Services);
<b>"Sites"</b>	means any premises (including the Authority Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Goods and Services are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Goods and Services;</li> </ul>
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>"Standards"</b>	means any: <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) standards detailed by the Authority in Paragraph 1 of Schedule 7 (Standards) or agreed between the Parties from time to time;</li> <li>c) relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>"Sub-Contract"</b>	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and Services or any part thereof or facilities, services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the provision of the Goods and Services or any part thereof;
<b>"Sub-Contractor"</b>	means any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to this Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
<b>"Supplier"</b>	means the person, firm or company named in the recitals with whom the Authority enters into this Contract;
<b>"Supplier Assets"</b>	means all assets and rights used by the Supplier to provide the Goods and services in accordance with this Contract but excluding the Authority Assets;



<b>"Supplier Background IPR"</b>	<p>means</p> <ul style="list-style-type: none"> <li>a) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</li> <li>b) Intellectual Property Rights created by the Supplier independently of this Contract;</li> </ul>
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Contract;
<b>"Supplier Equipment"</b>	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Authority) in the performance of its obligations under this Contract;
<b>"Supplier Non-Performance"</b>	has the meaning given to it in Clause 39.1 (Supplier Relief Due to Authority Cause);
<b>"Supplier Profit"</b>	means, in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
<b>"Supplier Profit Margin"</b>	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier and notified to the Authority in accordance with Clause 20;
<b>"Supplier's Confidential Information"</b>	<p>means</p> <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract;</li> <li>c) information derived from any of the above.</li> </ul>
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on or before <b>14/11/2014</b> and annexed to or referred to in Schedule 16 (Tender);

<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>"Third Party IPR"</b>	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Goods and/or Services;
<b>"Undelivered Goods"</b>	has the meaning given to it in Clause 9.3.1 (Goods);
<b>"Undelivered Services"</b>	has the meaning given to it in Clause 8.3.1 (Services);
<b>"Undisputed Sums Time Period"</b>	has the meaning given to it Clause 42.1.1 (Termination of Authority Cause for Failure to Pay);
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Authority that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Schedule 3 (Contract Charges, Payment and Invoicing);
<b>"Variation"</b>	has the meaning given to it in Clause 22.1 (Variation Procedure);
<b>"Variation Form"</b>	means the form set out in Schedule 13 (Variation Form);
<b>"Variation Procedure"</b>	means the procedure set out in Clause 22.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Warranty Period"</b>	means, in relation to any Goods, one year;
<b>"Worker"</b>	means any one of the Supplier Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees <a href="https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees">https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees</a> applies in respect of the Services;
<b>"Working Day"</b>	means any Day other than a Saturday or Sunday or public holiday in England and Wales, Scotland, and Northern Ireland.

## **SCHEDULE 2: GOODS AND SERVICES**

### **1. INTRODUCTION**

1.1 This Schedule specifies the Goods and Services to be provided under this Contract. A supply of Body Armour and covers (both overt and covert) is required by Home Office (the Authority) staff in both Border Force and Immigration Enforcement. Body Armour may also be required by other departments across the Home Office throughout the life of the Contract.

#### **1.2 Background to the Authority**

1.2.1 Border Force and Immigration Enforcement staff function throughout the United Kingdom and Europe with duties that range from searching vehicles, aircraft and vessels through to entering premises using force. The Body Armour shall provide protection for these staff in a confrontational environment where the risk of injury is heightened.

#### **1.3 Background to Requirement / Overview of Requirement**

1.3.1 The Supplier shall supply Body Armour which must afford protection against injury from specified levels of ballistic, knife and spike threat as detailed in paragraph 3 of this document, whilst ensuring that, in the performance of all duties, the movement of the wearer is not unduly restricted. The protected areas must include shoulders and torso, including coverage of the central abdominal organs and thorax; in particular the heart, liver, lungs, kidneys and spleen.

#### **1.4 Volumes**

1.4.1 The anticipated annual volume is 1500 units. This volume is an estimate only and the Authority cannot provide any guarantees on future volumes, and cannot provide any guarantees about the frequency or timing of orders. The Authority does not commit to placing any minimum number of orders, or any minimum order values, or any minimum order quantities.

### **2. MANDATORY REQUIREMENTS**

#### **2.1 General requirements**

2.1.1 The Supplier shall supply Body Armour which must comprise:

- Armour panels (to specifications detailed in paragraphs 4.1, 4.2, 4.3 and 4.4);
- Overt Armour cover (to specifications detailed in paragraph 5.1);
- Overt load bearing vest (to specifications detailed in paragraph 5.5);
- Covert Armour cover (to specifications detailed in paragraphs 5.2);
- Armour carrier bags to accommodate the above items.

- 2.1.2 The Body Armour shall be comfortable to wear, in particular heat dissipation, flexibility, drape, cover design, sweat management, fabric to skin comfort and edge chafing.
- 2.1.3 The sizing policy and ordering process will be agreed and documented immediately following Contract Award.
- 2.1.4 The Supplier shall supply Body Armour which must provide a minimum in-service life of five years for the protection panels and a minimum of two years for the outer covers.
- 2.1.5 The Supplier shall provide a one year warranty against manufacturing and material defects under normal usage conditions for each item of Body Armour that it supplies.
- 2.1.6 The Body Armour design shall support the existing and future supply of Molle system accessories.
- 2.1.7 There is a requirement for the supply of replacement covers for existing Armour panels that are still in date and usable. The Supplier shall supply replacement covers as a standard stand-alone item, in a full range of sizes.

## 2.2 **Sizing & Fit**

- 2.2.1 The Body Armour system shall be available in a comprehensive range of sizes to allow for a variation of gender, height and build of the wearers.
- 2.2.2 The Supplier shall provide clear measuring guidance and a template order form.
- 2.2.3 The sizing system shall allow for wearers whose front and back lengths are not in proportion.
- 2.2.4 The cover shall allow adjustment to ensure accurate fitting and comfort whilst retaining performance.
- 2.2.5 The Body Armour must maintain its position on the body and not “ride up” on the wearer during normal activities.

## 3. **PROTECTION REQUIREMENTS**

- 3.1 The Supplier shall supply Body Armour which must protect against the threat levels as set out in paragraph 3 of this document. Please note this is the current requirement of UK Border Force and Immigration Enforcement. This requirement may be subject to review at any stage throughout the term of the Contract, and levels of protection may be revised.
- 3.2 In the event of any change to the protection levels set out in paragraphs 3.4, 3.5 and 3.6 of this document, the Supplier shall work with the Authority to ensure that the Body Armour supplied meets the minimum requirement level of protection.

- 3.3 The Authority will notify the Supplier, at the earliest available opportunity, in the event of any change in requirement. The Home Office Standards can be found by accessing the following web link:

[http://ped-cast.homeoffice.gov.uk/index.php/standards/standards\\_display](http://ped-cast.homeoffice.gov.uk/index.php/standards/standards_display)

- 3.4 **Knife Protection**

- 3.4.1 The Body Armour must provide minimum knife protection to Home Office Scientific Development Branch / Centre of Applied Science (HOSDB/CAST) Knife Resistant Standards KR1 and KR2. The Authority will specify the precise level of protection it requires in each purchase order.

### 3.5 **Ballistic Protection**

- 3.5.1 The Body Armour must provide minimum ballistic protection using the ballistic penetration resistance requirements as specified in (HOSDB/CAST) Ballistic Standards HG1A and HG2. The Authority will specify the precise level of protection it requires in each purchase order.

### 3.6 **Spike Protection**

- 3.6.1 The Body Armour must provide minimum spike protection to (HOSDB/CAST) Standards SP1 and SP2. The Authority will specify the precise level of protection it requires in each purchase order.

## 4. **ARMOUR PANELS**

### 4.1. **Knife Protection**

- 4.1.1 The Body Armour must provide minimum knife protection to (HOSDB/CAST) Knife Resistant Standards KR1 and KR2 (the Authority will specify the specific standard it requires in each purchase order). The Supplier shall ensure that it maintains and retains current and valid test certificates at all times. The Authority reserves the right to request copies of certificates at any time throughout the term of the Contract.

### 4.2 **Ballistic Protection**

- 4.2.1 The Body Armour must provide minimum ballistic protection using the ballistic penetration resistance requirements as specified in (HOSDB/CAST) Ballistic Standards HG1A and HG2 (the Authority will specify the specific standard it requires in each purchase order). The Supplier shall ensure that it maintains and retains current and valid test certificates at all times. The Authority reserves the right to request copies of certificates at any time throughout the term of the Contract.

### 4.3 **Spike Protection**

- 4.3.1 The Body Armour must provide minimum spike protection to (HOSDB/CAST) Standards SP1 and SP2 (the Authority will specify the specific standard it requires in each purchase order). The Supplier shall ensure that it maintains and retains current and valid test certificates at all times. The Authority reserves the right to request copies of certificates at any time throughout the term of the Contract.
- 4.3.2 The Armour panels shall be contained within sealed units. The sealed unit covering material, must be robust, wipeable and waterproof, and shall also offer chemical resistance, principally against Methyl Isobutyl Ketone (MIBK)/Orthochloro benzylidene malononitrile (CS) and heat tolerance properties.
- 4.3.3 The area of Body Armour coverage must be consistent with the protection areas and wearability aspects specified in paragraphs 1.3 and 5.4 of this document. The area of protection provided by the Body

Armour must extend to the edge of the outer cover and shield all specified areas as set out in paragraph 1.3.

- 4.3.4 Trauma protection shall be included as an integral part of the Armour panel pack (i.e. the cover and panels).

#### 4.4 **Labelling**

- 4.4.1 All Armour panels shall be labelled as follows:

- Manufacturer's name;
- Size;
- Indicating front, back and shoulder (left and right);
- Indicating which side of the Armour should be worn against the body;
- Serial number;
- Date of manufacture;
- Guarantee period from the date of delivery to the Purchaser, clearly stating when the guarantee period will end;
- The level of protection using the HOSDB (or equivalent) colour coding and numbers;
- Batch number;
- Space for an officer to enter his/her name and 7 digit registered number on the label;
- Care instructions;
- Correct assembly.

- 4.4.2 All labels and markings must remain visible for the guaranteed lifetime of the Body Armour.

### 5. **ARMOUR COVERS**

#### 5.1. **OVERT ARMOUR COVER**

- 5.1.1. The overt armour cover shall provide suitable adjustments to allow comfortable wearing of the body armour. The armour shall provide the following features:

- Waistcoat style with centre zip: the zip must be capable of locking and must be of a design that will prevent opening if accidentally dislodged from the locked position;
- 2 zipped internal pockets aligned at either side of zip capable of containing standard Border Force/Immigration Enforcement notebook (16cm x 12cm x 2cm);
- Black in colour with fixed hook and loop area to accommodate badges on back of cover and left breast area; (badge specifications are located in Annex B of this document);

- 2 'click-fast' radio docks to be securely fitted between shoulders and chest area with an additional 2 radio loops (size 7cm x 2.5cm) in nearby location;
- Shoulder mounted flaps to accommodate epaulettes (for information only Annex G of this document provides the dimensions of the epaulettes);
- A fixed hook and loop attached removable panel incorporating a Molle attachment system on left and right sides of zip;
- Outer fabric: heavy duty cordura or equivalent with petroguard or equivalent finish; inner garment and panels to consist of a black sports mesh with appropriate material for improved heat management.

5.1.2. All armour cover fasteners and adjustments shall be capable of retaining opening and closing properties for the guaranteed life of the cover. Any system adopted shall be designed so that in operation there are no deleterious effects on the cover.

5.1.3. The cover shall have the following properties:

- machine washable at 50°C;
- durable for frequent laundering;
- highly abrasion resistant;
- high tensile strength;
- high tear strength.

## 5.2. Covert Armour Cover

5.2.1. The Covert Armour Cover will be worn under the outer garment and must provide suitable adjustments to allow comfortable wearing of the Body Armour. the cover shall be white or black in colour, yet inconspicuous and must allow discreet wear under lightweight plain clothes (i.e. t-shirts or smart casual, such as shirts or blouses).

## 5.3. Armour Design

5.3.1. The Supplier shall provide Body Armour panels in male and female design, cut to the natural shape of the body, whilst offering specified protection over the stipulated area of coverage.

5.3.2. If requested by the Authority, the Supplier shall supply Body Armour to meet specific shape / measurement requirements.

## 5.4. Wearability

5.4.1. Wearability will be a measure of the overall design of the Armour and cover. The Supplier shall supply body armour which complies with the following wearability attributes:

- Maximum flexibility;
- Effective, comfortable fit;
- Body ventilation, heat dissipation and sweat management;
- Easily accessible panel adjustments;
- Recognition of male / female design requirement.

5.4.2. The Body Armour must be comfortable and compatible with the following operational aspects:

- A replication of the activities associated with a typical 9 hour tour of duty;
- Compatibility with utility belt and equipment including expandable baton and handcuffs;
- The Armour must be designed in such a way that it can be removed reasonable quickly and easily in emergencies;
- The Armour must meet the ergonomic requirements of personnel allowing staff to undertake their duties and activity.

## **5.5. Overt Load Bearing Vest**

5.5.1. The Overt Load Bearing Vest must provide suitable adjustments to allow for comfortable wearing without interference over the Overt Armour of Body Armour. The Armour shall provide the following features:

- Waistcoat style with centre zip: the zip must be capable of locking and must be of a design that will prevent opening if accidentally dislodged from the locked position;
- 2 internal zipped pockets aligned at either side of zip capable of containing standard Border Force/Immigration Enforcement notebook (16cm x 12cm x 2cm);
- Black in colour with fixed hook and loop area to accommodate badges on back of cover and left breast area; (badge specifications are located in Annex B of this document);
- 2 'click-fast' radio docks to be securely fitted between shoulders and chest area with an additional 2 radio loops (size 7cm x 2.5cm) in nearby location;
- Suitable retaining clips/docks for body worn mobile video cameras and shoulder mounted flaps to accommodate epaulettes;



- Molle attachment system to be fixed covering the full area on both left and right sides of the zip;
- Outer fabric: heavy duty cordura or equivalent with petroguard or equivalent finish; inner garment and panels to consist of a black sports mesh with appropriate material for improved heat management.

## **5.6. Ancillary Equipment**

5.6.1. The following items are examples of equipment that may be attached to the vest via the Molle system):

- Quick application handcuffs or rigid handcuffs;
- Standard issue notebook;
- Maglite torch;
- Extendable baton;
- Mobile phone;
- Gloves;
- Drugs testing kits;
- Knife;
- Concealment test spike;
- Pens/pencil;

and all Body Armour supplied shall be capable of accommodating these items.

5.6.2. All Armour cover fasteners and adjustments must be capable of retaining opening and closing properties for the guaranteed life of the cover. Any system adopted should be designed so that in operation there are no deleterious effects on the cover.

5.6.3. The cover must have the following properties:

- Machine washable at 50°C;
- Durable for frequent laundering;
- Highly abrasion resistant;
- High tear strength.

## **6. BADGES**

6.1 The Supplier shall supply a range of badges which meet the specification set out in Annex B of this document.

- 6.2 The Supplier shall ensure that the Authority is able to purchase badges as additional items without the need to purchase any other Body Armour items.

**7. ARMOUR CARRIER BAG**

- 7.1. The Supplier shall supply each set of Body Armour with an Armour carrier bag, which must be made of a robust material. The Armour carrier bag must be black in colour, have two carrying handles and an owner identification panel attached.
- 7.2. When requested by the Authority, the Supplier shall supply Body Armour without an Armour carrier bag.

**8. DISPOSAL**

- 8.1. The Supplier shall provide a disposal service for the existing Body Armour, regardless of the original supply chain.

**9. ADDITIONAL REQUIREMENTS**

- 9.1. The Supplier must provide a set of Body Armour equivalent to the above specifications with an integrated floatation device, suitable for use in the maritime area, with a high visibility option.

**10. DELIVERY REQUIREMENTS**

- 10.1. The Supplier shall deliver to all participating Home Office locations throughout the UK, in accordance with the delivery arrangements made with individual members of staff at those locations.
- 10.2. The Supplier shall ensure that all Body Armour ordered is delivered to the nominated location within 3 Working Days of an acceptable order being received by the Supplier. Delivery means receipt by the customer of the item(s) ordered, inclusive of appropriate branding, at the address quoted on the relevant purchase order.

**11. FAULTY GOODS**

- 11.1. The Authority will reject or return Goods which are damaged in transit or fail to conform with the specification to the Supplier. In accordance with Clause 9 of the Contract, the detailed process will be agreed and documented following Contract Award; and
- 11.2. Where any defect in any of the Goods has arisen during such guarantee period, under proper and normal use, the Authority will return Goods to the Supplier. In accordance with Clause 9 of the Contract, the detailed process will be agreed and documented following Contract Award.

**12. REPORTING**

- 12.1. The Supplier shall provide management information on a monthly basis.
- 12.2. The format and content of the information shall be agreed between the Authority and Supplier, at the initial meeting, following Contract Award.

**13. QUALITY PLAN**

13.1 The Supplier shall produce a quality plan for every type of Body Armour supplied under the Contract. The plan must include the method of manufacturing and set out how the Supplier shall ensure quality is maintained throughout the life of the Contract.

13.2 The Supplier shall provide the Authority with a technical specification file for each item in the Body Armour set, in the format specified by the Authority. The Supplier shall ensure that the technical specification is wholly accurate and kept up-to-date at all times.

#### **14. CONTINUOUS IMPROVEMENT**

14.1 The Supplier shall continually improve the way in which the required Services are to be delivered throughout the Contract duration.

14.2 The Supplier shall present new ways of working to the Authority during quarterly Contract review meetings.

14.3 Any changes to the way in which the Services are to be delivered must be agreed with the Authority prior to any changes being implemented.

#### **15. STAFF AND CUSTOMER SERVICE**

15.1 The Authority requires the Supplier to provide a sufficient level of resource throughout the duration of the Contract to consistently deliver a quality service to all Parties.

15.2 The Supplier's staff assigned to the Supply and Delivery of Body Armour for the Home Office shall have the relevant qualifications and experience to deliver the Contract.

15.3 The Supplier shall ensure that staff understand the Authority's vision and objectives, and will provide a service to meet their requirements.

#### **16. SERVICE LEVELS AND PERFORMANCE**

16.1 The Authority will measure the quality of the Supplier's performance in accordance with the Service Levels as set out in Annex A of this document and Contract Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

16.2 The Supplier shall provide the Authority with monthly Performance Monitoring Reports in accordance with the requirements set out in Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

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

17.1 The Supplier shall comply with the requirements set out in Contract Schedule 9 (Business Continuity and Disaster Recovery).

Acronym	Description
HOSDB/CAST	Home Office Scientific Development Branch / Centre Of Applied Science Testing
KR1	The lowest protection allowed

HG1A	2 <sup>nd</sup> Level body armour standard
SP1	Protection level same as KR1
P1B	Type/ length of blade
MIBK	Methyl Isobutyl Ketone
CS	Orthochloro Benzylidene Malonoltrile

## **SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING**

### **1. DEFINITIONS**

- 1.1 The following terms used in this Schedule shall have the following meaning:
- |                                 |   |
|---------------------------------|---|
| <b>"Review Adjustment Date"</b> | has the meaning given to it in paragraph 10.1.1 of this Schedule; |
|---------------------------------|---|

### **2. GENERAL PROVISIONS**

- 2.1 This Schedule details:
- 2.1.1 the Contract Charges for the Goods and/or the Services under this Contract; and
  - 2.1.2 the payment terms/profile for the Contract Charges;
  - 2.1.3 the invoicing procedure; and
  - 2.1.4 the procedure applicable to any adjustments of the Contract Charges.

### **3. CONTRACT CHARGES**

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

### **4. COSTS AND EXPENSES**

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

### **5. NOT USED**

### **6. PAYMENT TERMS/PAYMENT PROFILE**

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

### **7. INVOICING PROCEDURE**

- 7.1 The Authority shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the

address specified by the Authority in paragraph 7.5 of this Schedule and in accordance with the provisions of this Contract.

- 7.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Authority may specify):

7.2.1 contains:

- (a) all appropriate references, including the unique order reference number RM3709; and
- (b) a detailed breakdown of the Delivered Goods and Services, including the Milestone(s) (if any) and Deliverable(s) within this Contract to which the Delivered Goods and/or Services relate, against the applicable due and payable Contract Charges; and

7.2.2 shows separately:

- (a) any Service Credits due to the Authority; and
- (b) the VAT added to the due and payable Contract Charges in accordance with Clause 23.2.1 of this Contract (VAT) and the tax point date relating to the rate of VAT shown; and

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

- 7.3 The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and Services where such card is agreed with the Authority to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Authority.

- 7.4 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

- 7.5 The Supplier shall submit invoices directly to:

Home Office Shared Service Centre

HO Box 5015

Newport,

Gwent

NP20 9BB

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

- 8.1 The Contract Charges shall only be varied:

8.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges in accordance with Clause 22.2 of this Contract (Legislative Change);

8.1.2 where all or part of the Contract Charges are reduced as a result of a review of the Contract Charges in accordance with Clause 18 of this Contract (Continuous Improvement);

- 8.1.3 where all or part of the Contract Charges are reduced as a result of a review of Contract Charges in accordance with Clause 25 of this Contract (Benchmarking);
  - 8.1.4 where all or part of the Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Schedule;
  - 8.1.5 where a review and increase of Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of paragraph 10 of this Schedule.
- 8.2 Subject to paragraphs 8.1.1 to 8.1.4 of this Schedule, the Contract Charges will remain fixed for the first two (2) Contract Years.

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

- 9.1 Every six (6) Months during the Contract Period, the Supplier shall assess the level of the Contract Charges to consider whether it is able to reduce them.
- 9.2 Such assessments by the Supplier under paragraph 9 of this Schedule shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Contract Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 11.1.4 of this Schedule below.

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

- 10.1 The Supplier may request an increase in all or part of the Contract Charges in accordance with the remaining provisions of this paragraph 10 subject always to:
  - 10.1.1 the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Contract Charges ("**Review Adjustment Date**") which shall be subject to paragraph 10.2 of this Schedule; and
  - 10.1.2 the Approval of the Authority which shall be granted in the Authority's sole discretion.
- 10.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the second (2nd) anniversary of the Commencement Date. Thereafter any subsequent increase to any of the Contract Charges in accordance with this paragraph 10 of this Schedule shall not occur before the anniversary of the previous Review Adjustment Date during the Contract Period.
- 10.3 To make a request for an increase of some or all of the Contract Charges in accordance with this paragraph 10, the Supplier shall provide the Authority with:
  - 10.3.1 a list of the Contract Charges it wishes to review;
  - 10.3.2 for each of the Contract Charges under review, written evidence of the justification for the requested increase including:
    - (a) a breakdown of the profit and cost components that comprise the relevant Contract Charge;
    - (b) details of the movement in the different identified cost components of the relevant Contract Charge;

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

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

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

- 11.1.1 in accordance with Clause 22.2 of this Contract (Legislative Change) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.1 of this Schedule;
- 11.1.2 in accordance with Clause 18 of this Contract (Continuous Improvement) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.2 of this Schedule;
- 11.1.3 in accordance with Clause 25 of this Contract (Benchmarking) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.3 of this Schedule; or
- 11.1.4 on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.4 of this Schedule 3 ; or
- 11.1.5 on the Review Adjustment Date where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.5 of this Schedule;

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



## **ANNEX 1: CONTRACT CHARGES**

**[REDACTED]**

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

The Authority will make payments on receipt of correct and valid invoices, providing those items have been received at the Authority's nominated premises and have been inspected and received confirmed by a nominated official of the Authority.

The Supplier shall invoice the Authority monthly in arrears for Body Armour.

Invoices must quote any purchase order number issued by the Authority, or be in the format agreed by the Authority and should be submitted to:

Home Office Shared Service Centre  
HO Box 5015  
Newport,  
Gwent  
NP20 9BB  
Tel: 08450 100125  
Fax: 01633 581514  
Email: [post-room-rescan@homeoffice.gsi.gov.uk](mailto:post-room-rescan@homeoffice.gsi.gov.uk)

Payment will be made within 30 days of receipt of a correct and valid invoice subject to the services detailed in Schedule 2 having been completed to the satisfaction of the Authority's Contract Manager.

The standards for satisfactory delivery will include, but are not limited to, overall quality, presentation, timeliness and applicability to the Authority.

**SCHEDULE 4: NOT USED**

**PART C: NOT USED**

**SCHEDULE 5: NOT USED**

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

### **1. SCOPE**

- 1.1 This Schedule (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Goods and Services, the mechanism by which Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Goods and/or Services will be monitored.
- 1.2 This Schedule comprises:
  - 1.2.1 Part A: Service Levels and Service Credits;
  - 1.2.2 Annex 1 to Part A - Service Levels and Service Credits Table;
  - 1.2.3 NOT USED;
  - 1.2.4 Part B: Performance Monitoring; and
  - 1.2.5 NOT USED;

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

### **1. GENERAL PROVISIONS**

- 1.1 The Supplier shall provide a proactive Contract manager to ensure that all Service Levels in this Contract are achieved to the highest standard throughout the Contract Period.
- 1.2 The Supplier shall provide a managed service through the provision of a dedicated Contract manager where required on matters relating to:
  - 1.2.1 Supply performance;
  - 1.2.2 Quality of Goods and Services;
  - 1.2.3 Authority support;
  - 1.2.4 Complaints handling; and
  - 1.2.5 Accurate and timely invoices.
- 1.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Schedule will result in Service Credits being due to the Authority.

### **2. PRINCIPAL POINTS**

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

### **3. SERVICE LEVELS**

- 3.1 Annex 1 to this Part A of this Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of this Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Schedule (the "**Service Level Performance Criteria**") and shall send the Authority a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 3.3 The Supplier shall, at all times, provide the Goods and Services in such a manner that the Service Levels Performance Measures are achieved.
- 3.4 If the level of performance of the Supplier of any element of the provision by it of the Goods and Services during the Contract Period:
  - 3.4.1 Is likely to or fails to meet any Service Level Performance Measure the Supplier shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without prejudice to any other

of its rights howsoever arising including under Clause 13 of this Contract (Service Levels and Service Credits), may:

- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure from taking place or recurring; and
  - (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure the Authority shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
  - (c) if a Service Level Failure has occurred, deduct from the Contract Charges the applicable Service Level Credits payable by the Supplier to the Authority in accordance with the calculation formula set out in Annex 1 of this Part A of this Schedule.
  - (d) NOT USED.
- 3.5 Approval and implementation by the Authority of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Authority.

#### **4. SERVICE CREDITS**

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

#### **5. NATURE OF SERVICE CREDITS**

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



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

Service Level Performance Criterion	Key Indicator	Service Level Performance Measure
<p><b><u>1 – Quality</u></b></p> <p>Body Armour must be those indicated in the Statement of Requirements.</p> <p><b>Monitored by:</b> Account Manager</p> <p><b>Reported:</b> Monthly.</p> <p><b>Description:</b> The Supplier shall provide a monthly MI report – validated with the Authority's Contract Manager – that details where any items despatched varied from the Statement of Requirements.</p>	Quality	<p>99% compliant (i.e. only 1% of garments despatched will deviate from the agreed garments in the Statement of Requirements).</p> <p>Any deviation must be agreed by the Authority in advance.</p>
<p><b><u>2 – Failure in the Field</u></b></p> <p>i.e. Body Armour failing in normal expected operation – excluding any wearer abuse.</p> <p><b>Monitored by:</b> Account Manager</p> <p><b>Reported:</b> Monthly.</p> <p>The Authority will notify any returns via the Supplier's agreed process and dispatch any failed garments within 48 hours. The Supplier will provide replacement items at nil cost to the Authority within seven (7) working days.</p> <p>If the Supplier believes normal operation did not apply (i.e. damaged outside of normal wear and tear) the Supplier and the Authority will review the evidence to mutually agree if this Service Level applies.</p> <p>Any quality failure that affects the safety of the wearer will be dealt with immediately by the Supplier.</p> <p><b>Description:</b> The Supplier shall provide a monthly MI report – validated with the Authority's Contract Manager – that details:</p> <ul style="list-style-type: none"> <li>any products that failed in normal usage;</li> <li>the date when the Authority returned them; and</li> </ul> <p>the date by which the Supplier issued replacement(s).</p>	Quality	100% compliant at all times
<p><b><u>3 – Delivery against timescales specified in paragraph 10.2 of the Statement of Requirements</u></b></p>	Timeliness	99% compliant (i.e. only 1% of deliveries outside agreed timescales).

Service Level Performance Criterion	Key Indicator	Service Level Performance Measure
<p><b>Monitored by:</b> Account Manager</p> <p><b>Reported:</b> Monthly.</p> <p><b>Provision:</b> Monitors orders despatched / received against agreed delivery times.</p> <p><b>Key performance requirement:</b></p> <p>All items ordered in accordance with delivery timings agreed at award stage are delivered on / before, the timings indicated.</p> <p><b>Description:</b> The Supplier shall provide a rolling monthly MI report – validated with the Authority's Contract Manager – that indicates the date of orders received and the date of delivery to the participating Home Office location.</p>		
<p><b><u>4 – Correct Delivery</u></b></p> <p><b>Monitored by:</b> Account Manager</p> <p><b>Reported:</b> Monthly.</p> <p><b>Provision:</b> Monitors incorrectly addressed packages</p> <p><b>Key performance requirement:</b></p> <p>All packages are addressed to the delivery details indicated in individual orders placed by the Authority and the contents of delivery match the order placed.</p> <p><b>Description:</b>  The Supplier shall provide a rolling monthly MI report – validated with the Authority's Contract Manager – that indicates the date of orders received and the date of delivery to the participating Home Office location.</p> <p>1. The Supplier shall provide a monthly MI report – validated with the Authority's Contract Manager - that details any packages where delivery details were missing, inaccurate / incomplete.</p> <p>2. The report shall also detail the ensuing delay (if any) incurred by the Authority in terms of the delivery times agreed.</p> <p>3. The report shall also detail whether the contents of the delivery did not match the order that was placed.</p>	Accuracy	99% compliant (i.e. only 1% of deliveries to incorrect location).

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

For each Service Level Percentage failure to achieve the Service Level in each Service Period	Service Credit for each Service Period
0.1% – 3.9%	1% Service Credit gained for failure under the specified Service Level Performance Measure
4.0% – 8.9%	5% Service Credit gained for failure under the specified Service Level Performance Measure
9.0% – 19.9%	10% Service Credit gained for failure under the specified Service Level Performance Measure
20.0% – 40.9%	25% Service Credit gained for failure under the specified Service Level Performance Measure
41.0% – 60.9%	40% Service Credit gained for failure under the specified Service Level Performance Measure
61.0% – 99.9%	70% Service Credit gained for failure under the specified Service Level Performance Measure
100%	100% Service Credit gained for failure under the specified Service Level Performance Measure

Service Credits for each Service Level will be calculated on the basis of the following formula:

- Service Level 4 (Correct Delivery) – Service Level is 99%
- If achievement of this Service Level is reported as 95.5% in a Service Period, then the failure is calculated as follows:  
 $99\% - 95.5\% = 3.5\%$
- A failure of 3.5% attracts a Service Credit of 1%.
- For illustrative purposes, if the value of the total Contract Charges for the same Month is £10,000, then the Service Credit would be calculated as  $1\% \times £10,000$ .
- The Service Credit in this example would be £100.

**ANNEX 2 TO PART A: NOT USED**

## **PART B: PERFORMANCE MONITORING**

### **1. PRINCIPAL POINTS**

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

### **2. REPORTING OF SERVICE FAILURES**

- 2.1 The Supplier shall report all failures to achieve Service Levels to the Authority in accordance with the processes agreed in paragraph 1.2 of Part B of this Schedule above.

### **3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 3.1 The Supplier shall provide the Authority with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 3.1.3 NOT USED;
  - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.1.5 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
  - 3.1.6 such other details as the Authority may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
  - 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;

- 3.2.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;
  - 3.2.3 be attended by the Supplier's Representative and the Authority's Representative; and
  - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Authority's Representative at each meeting.
- 3.3 The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

#### **4. SATISFACTION SURVEYS**

- 4.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Goods and/or Services.
- 4.2 The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Goods and Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.
- 4.3 All other suggestions for improvements to the provision of Goods and Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 18 of this Contract (Continuous Improvement).

**ANNEX 1 TO PART B: NOT USED**

## **SCHEDULE 7: STANDARDS**

### **1. STANDARDS**

- 1.1 All Body Armour supplied pursuant to this Contract must comply with Home Office Standards for knife protection, ballistic protection, spike protection and offer chemical resistance and heat tolerance properties, as specified in the Specification (in Schedule 2 of this Contract).
- 1.2 The Home Office Standards can be found by accessing the following web link:  
  
[http://ped-cast.homeoffice.gov.uk/index.php/standards/standards\\_display](http://ped-cast.homeoffice.gov.uk/index.php/standards/standards_display)
- 1.3 Please note this is the current requirement of UK Border Force and Immigration Enforcement. This requirement may be subject to review at any stage throughout the term of the Contract, and levels of protection may be revised.
- 1.4 In the event of any change to the protection levels set out in the Specification (Schedule 2 of this Contract), the Supplier shall work with the Authority to ensure that the Body Armour it supplies meets the minimum requirement level of protection. The Authority will notify the Supplier, at the earliest available opportunity, in the event of any change in requirement.



**SCHEDULE 8: NOT USED**

## SCHEDULE 9: BUSINESS CONTINUITY AND DISASTER RECOVERY

### 1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>"Business Continuity Plan"</b>	has the meaning given to it in paragraph 2.2.1(b) of this Schedule;
<b>"Business Continuity Services"</b>	has the meaning given to it in paragraph 4.2.2 of this Schedule;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in 2.2.1(c) of this Schedule;
<b>"Disaster Recovery Services"</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a disaster;
<b>"Disaster Recovery System"</b>	the system identified by the Supplier in the Tender which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>"Review Report"</b>	has the meaning given to it in paragraph 6.2 of this Schedule;
<b>"Supplier's Proposals"</b>	has the meaning given to it in paragraph 6.2.3 of this Schedule;

### 2. BCDR PLAN

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

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

2.1.2 the recovery of the Goods and Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "**Business Continuity Plan**"); and

(c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and

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

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

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

- 2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft BCDR Plan:
  - 2.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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

- 3.1 Part A of the BCDR Plan shall:
  - 3.1.1 set out how the business continuity and disaster recovery elements of the 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 operation of the provision of the Goods and/or Services and any goods and services provided to the Authority by a Related Supplier;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
  - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Supplier in each case as notified to the Supplier by the Authority from time to time;
  - 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 multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
  - 3.1.6 contain a risk analysis, including:
    - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
    - (b) identification of any single points of failure within the provision of Goods and/or Services and processes for managing the risks arising therefrom;
    - (c) identification of risks arising from the interaction of the provision of Goods and Services and with the goods and services provided by a Related Supplier; and

- (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Authority;
- 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 ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the Authority 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 advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 The Goods and/or Services 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, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
  - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Goods and/or Services or to the business processes facilitated by and the business operations supported by the provision of Goods and/or Services.
- 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 PLAN - PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Goods and/or Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
  - 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Goods and/or Services; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Goods and/or Services in order to address any prevailing effect of

the failure or disruption including a root cause analysis 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 Goods and Services;
- 4.2.2 set out the goods and services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Goods and Services (such goods, services and steps, the “**Business Continuity Services**”);
- 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 Goods and/or Services during any period of invocation of the Business Continuity Plan; and
- 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

## 5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority 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 Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
  - 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
  - 5.3.3 the procedures and processes necessary for the supply and delivery of Body Armour to the Authority;
  - 5.3.4 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 Goods and/or Services during any period of invocation of the Disaster Recovery Plan;
  - 5.3.5 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;
  - 5.3.6 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
  - 5.3.7 testing and management arrangements.

## 6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- 6.1.1 on a regular basis and as a minimum once every six (6) months;
  - 6.1.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
  - 6.1.3 where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Goods and/or Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "**Review Report**") setting out:
- 6.2.1 the findings of the review;
  - 6.2.2 any changes in the risk profile associated with the provision of Goods and/or Services; and
  - 6.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
- 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.
- 6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
- 6.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

- 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Goods and/or Services.

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

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Schedule, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Goods and/or Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the 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 Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Goods and/or Services or as otherwise reasonably requested by the Authority.

## **8. INVOCATION OF 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 Authority promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Authority.



**SCHEDULE 10: NOT USED**

**SCHEDULE 11: NOT USED**

## **SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE**

### **1. DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Counter Notice”</b>	has the meaning given to it in paragraph 6.2 of this Schedule;
<b>“Exception”</b>	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Contract or in the supply of the Goods and/or Services;
<b>“Expert”</b>	the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule; and
<b>“Mediation Notice”</b>	has the meaning given to it in paragraph 3.2 of this Schedule;
<b>“Mediator”</b>	the independent third party appointed in accordance with paragraph 4.2 of this Schedule.

### **2. INTRODUCTION**

2.1 If a Dispute arises then:

- 2.1.1 the representative of the Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Schedule, the reason why.

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

2.4 Subject to paragraph 3.2 of this Schedule, the Parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Schedule);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Schedule); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule) or litigation (in accordance with Clause 57 of this Contract (Governing Law and Jurisdiction)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Schedule) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
  - 2.7.2 in paragraph 4.2, ten (10) Working Days;
  - 2.7.3 in paragraph 5.2, five (5) Working Days; and
  - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### 3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority's Representative and the Supplier's Representative.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
  - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Schedule; or
  - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Schedule.

### 4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Contract.

- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## **5. EXPERT DETERMINATION**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
  - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
  - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
  - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
  - 5.3.5 the process shall be conducted in private and shall be confidential; and
  - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **6. ARBITRATION**

- 6.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule.

- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Schedule or be subject to the jurisdiction of the courts in accordance with Clause 57 of this Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule shall apply;
  - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
  - 6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule or commence court proceedings in the courts in accordance with Clause 57 of this Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 to 6.4.7 of this Schedule);
  - 6.4.2 the arbitration shall be administered by the LCIA;
  - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 6.4.5 the chair of the arbitral tribunal shall be British;
  - 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
  - 6.4.7 the seat of the arbitration shall be London.

## **7. URGENT RELIEF**

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

- 7.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 7.1.2 where compliance with paragraph 2.1 of this Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

**SCHEDULE 13: VARIATION FORM**

No of order being varied:

.....

Variation Form No:

.....

BETWEEN:

THE HOME DEPARTMENT ("**the Authority**")

and

Cooneen Protection Ltd ("**the Supplier**")

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

**[Guidance Note: Insert details of the Variation]**

2. Words and expressions in this Variation shall have the meanings given to them in this Contract.
3. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address



## **SCHEDULE 14: COMMERCIALLY SENSITIVE INFORMATION**

### **1. INTRODUCTION**

- 1.1 In this Schedule 14 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 34.5 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

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

## **SCHEDULE 15: INSURANCE REQUIREMENTS**

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

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

### **2. GENERAL OBLIGATIONS**

- 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 the Goods and/or Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 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. FAILURE TO INSURE**

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

### **4. EVIDENCE OF POLICIES**

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

## **5. AGGREGATE LIMIT OF INDEMNITY**

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

## **6. CANCELLATION**

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

## **7. INSURANCE CLAIMS**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Goods and/or Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Goods and/or Services or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £5,000.00 relating to or arising out of the provision of the Goods and Services or this Contract on any of the Insurances or which, but for the

application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

- 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 Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

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

#### **1. INSURED**

- 1.1 The Supplier

#### **2. INTEREST**

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

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

2.1.2 loss of or damage to property;

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

#### **3. LIMIT OF INDEMNITY**

- 3.1 Not less than £5,000,000 in respect of any one claim and in the aggregate per annum.

#### **4. TERRITORIAL LIMITS**

- 4.1 Unlimited.

#### **5. PERIOD OF INSURANCE**

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

#### **6. COVER FEATURES AND EXTENSIONS**

- 6.1 Indemnity to principals clause.

#### **7. PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

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

#### **8. MAXIMUM DEDUCTIBLE THRESHOLD**

- 8.1 Not to exceed **[£ threshold to be agreed with Supplier]** for each and every third party property damage claim (personal injury claims to be paid in full).

**PART B: NOT USED**

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

### **1. GENERAL**

- 1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance with a limit of liability of not less than £10,000,000 in respect of any one claim and motor third party liability insurance.



## **SCHEDULE 16: TENDER**

### **1. GENERAL**

- 1.1 This Schedule 16 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire. Which was part of the ITT.
- 1.2 In addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Goods and Services to the Authority in accordance with the Tender.

#### **Cooneen Protection Ltd**

##### **[AQC1] Account Management**

The Authority requires the Potential Provider to provide a proactive Contract manager to ensure that all Service Levels in this Contract are achieved to the highest standard throughout the Contract period, as set out in Clause 1 of Contract Schedule 6 (Service Levels and Service Credits and Performance Monitoring).

Please outline the Contract management service that you will provide to the Authority.

##### **Response**

**[REDACTED]**

##### **[AQC2] Staff and Customer Service**

The Authority requires the Potential Provider to provide a sufficient level of resource in order to consistently deliver a quality service. Potential Provider's staff assigned to the Body Armour Contract shall have relevant qualifications and skills and shall fully understand the vision and objectives of the Contract, as set out in paragraph 15 of Attachment 2 – Statement of Requirements.

Please evidence how you will deliver this Requirement.

##### **Response**

**[REDACTED]**

##### **[AQC3] Complaints Handling**

The Authority requires the Potential Provider to provide a clearly defined procedure for the management of complaints received from the Authority, as set out in clause 1.2.4 in Contract Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

Please outline the process that you will have in place for managing complaints which are received from the Authority, which demonstrates how you will comply with clause 1.2.4 in Contract Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

**Response**

**[REDACTED]**

**[AQC4] Disposal Service for Body Armour**

The Authority requires the Potential Provider to provide a disposal service for Body Armour, regardless of the original supply chain, as set out in paragraph 8 of Attachment 2 – Statement of Requirements.

Please evidence how you will deliver this Requirement.

**Response**

**[REDACTED]**

## **SCHEDULE 17: KEY SUB-CONTRACTORS**

1. In accordance with Clause 29.2 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-Contractors listed below.

<b>Name of Key Sub-Contractor Registered Company Number Address Postcode Telephone number Email address</b>	<b>Brief description of goods / services sub-contracted</b>
NOT USED	NOT USED

**SCHEDULE 18: GUARANTEE – NOT USED**