

OFFICIAL

DATED 01/04/2023

(1) NUCLEAR DECOMMISSIONING AUTHORITY

(2) THINKPROJECT UK LIMITED

**NDA COMMERCIAL SYSTEMS PROCUREMENT
LOT C: CONTRACT MANAGEMENT SYSTEM
FOR END-TO-END PROJECT MANAGEMENT
CONTRACTS**

Relating to “Project Victory”

Ref: NDA9/00974

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

CONTENTS

	Page
SECTION A - PRELIMINARIES	6
1 DEFINITIONS AND INTERPRETATION	6
2 DUE DILIGENCE	7
3 WARRANTIES	7
SECTION B – THE SERVICES	8
4 TERM	8
5 SERVICES	9
6 IMPLEMENTATION	10
7 PERFORMANCE INDICATORS	10
8 SERVICES IMPROVEMENT	11
SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS	11
9 FINANCIAL AND TAXATION MATTERS	11
SECTION D - CONTRACT GOVERNANCE	13
10 GOVERNANCE	13
11 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA	13
12 CHANGE	13
SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN	14
13 SUPPLIER PERSONNEL	14
14 SUPPLY CHAIN RIGHTS AND PROTECTIONS	15
SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY	16
15 INTELLECTUAL PROPERTY RIGHTS	16
16 LICENCES GRANTED BY THE SUPPLIER	17
17 LICENCES GRANTED BY THE AUTHORITY	17
18 IPRS INDEMNITY	17
19 AUTHORITY DATA AND SECURITY REQUIREMENTS	18
20 CONFIDENTIALITY	19
21 TRANSPARENCY AND FREEDOM OF INFORMATION	20
22 PROTECTION OF PERSONAL DATA	22

23	PUBLICITY AND BRANDING	25
	SECTION G - LIABILITY, INDEMNITIES AND INSURANCE	25
24	LIMITATIONS ON LIABILITY	25
25	INSURANCE	26
	SECTION H – REMEDIES AND RELIEF	27
26	RECTIFICATION PLAN PROCESS	27
28	FORCE MAJEURE	28
	SECTION I – TERMINATION AND EXIT MANAGEMENT	29
29	TERMINATION RIGHTS	29
30	CONSEQUENCES OF EXPIRY OR TERMINATION	30
	SECTION J - MISCELLANEOUS AND GOVERNING LAW	31
31	COMPLIANCE	31
32	ASSIGNMENT AND NOVATION	32
33	WAIVER AND CUMULATIVE REMEDIES	32
34	RELATIONSHIP OF THE PARTIES	33
35	PREVENTION OF FRAUD AND BRIBERY	33
36	SEVERANCE	34
37	FURTHER ASSURANCES	34
38	ENTIRE AGREEMENT	34
39	THIRD PARTY RIGHTS	34
40	NOTICES	35
41	DISPUTES	36
42	GOVERNING LAW AND JURISDICTION	36
43	COUNTERPARTS/DUPPLICATES	36
	SCHEDULES	
2.1		
	SERVICES DESCRIPTION	72
	PART 2 103	
	DEFINITIONS AND DETERMINATION	103
	STANDARDS	107

OFFICIAL

SECURITY MANAGEMENT	109
INSURANCE REQUIREMENTS	113
AUTHORITY RESPONSIBILITIES	118
SUPPLIER SOLUTION	123
APPENDIX 4 – SUPPLIER TERMS & CONDITIONS	ERROR! BOOKMARK NOT DEFINED.
COMMERCIALLY SENSITIVE INFORMATION	127
SOFTWARE – NOT USED	130
MILESTONE ACHIEVEMENT PROCEDURE	ERROR! BOOKMARK NOT DEFINED.
CHARGES AND INVOICING	132
PAYMENTS ON TERMINATION	142
FINANCIAL REPORTS AND AUDIT RIGHTS	146
GOVERNANCE	150
CHANGE CONTROL PROCEDURE – NOT USED	153
DISPUTE RESOLUTION PROCEDURE	155
REPORTS AND RECORDS PROVISIONS	162
EXIT MANAGEMENT	168
SERVICE CONTINUITY PLAN	170
CONDUCT OF CLAIMS	176
STAFF TRANSFER	178

THIS AGREEMENT is made on

BETWEEN:-

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** whose principal place of business is at Herdus House, Westlakes Science Park, Moor Row, Cumbria CA24 3HU (the "**Authority**"); and
 - (2) **THINKPROJECT UK Limited** a company registered in Welland House, Meteor Court, Barnett Way, Barnwood, Gloucester GL43GG (the "**Supplier**").
- (each a "**Party**" and together the "**Parties**").

WHEREAS:-

- (A) The Authority is established to deliver the decommissioning and clean-up of the UK's civil nuclear legacy and wishes to purchase corporate applications and associated services to support its internal procurement activities and those of the Service Recipients.
- (B) On 29/03/2022 the Authority advertised on Find-A-Tender Service (FTS), reference 2022/S 000-008471, inviting prospective suppliers to submit proposals for the supply of the corporate applications and services as follows:

The Nuclear Decommissioning Authority (NDA) has established 'Project Victory', to replace expiring contracts and significantly enhance the NDA group's current commercial IT systems capability. The NDA group comprises Sellafield Ltd, Magnox Ltd, LLW Repository Ltd, Dounreay Site Restoration Ltd, International Nuclear Services Ltd, Direct Rail Services Ltd, and Radioactive Waste Management Ltd; and spends in the region of GBP 1.9 billion per annum with the supply chain. The new systems will cover all aspects of how we manage that spend including: our procurement pipelines, sourcing, contracts, commercial benefits and savings tracking, identifying and managing supply chain risk, and strategic supplier relationship management.

The new systems are being procured and contracted for by NDA in four parts, referred to hereafter as lots:

- Lot A: Source-to-Contract System;
- Lot B: Market Intelligence and Category Strategies;
- Lot C: Contract Management System for End-to-End Project Management Contracts;
- Lot D: Supply Chain Risk Management System.

The four parts are accompanied by an Analytics, Reporting and Dashboarding System – Lot E – a data warehouse with Microsoft Power BI that is being built by the Authority.

This Agreement is for the Lot C: Contract Management System for End-to-End Project Management Contracts, referred to hereafter as the Contract Management System. The Contract Management System will be used to manage projects from start to finish. Typical forms of contract to be managed through the system include the New Engineering Contract (NEC) suite of contracts, the Joint Contracts Tribunal (JCT) suite of contracts, or similar. Many of these contracts will be Works contracts but the system will be expected to support Services and Supplies contracts too.

The Contract Management System is a critical system within the Project Victory commercial systems suite and will be required to interface directly with the systems procured under the other lots and the Lot E Analytics, Reporting and Dashboarding system, creating 'one-version of the truth' and providing data and information for operational management and strategic decision making whilst minimising double-keying.

- (C) The Supplier is a leading provider of Contract Management Solutions and has experience in delivering Contract Management Systems and related services in a Works context.
- (D) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.

- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:-

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*).
- 1.2 In this Agreement, 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 Central Government 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 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):-
 - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
 - 1.2.6 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**";
 - 1.2.7 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;
 - 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - 1.2.9 unless otherwise provided, references to Clauses and Schedules are references to the Clauses and Schedules of this Agreement and references in any Schedule to paragraphs, Parts and Appendices are, unless otherwise provided, references to the paragraphs, parts and appendices of the Schedule or the Part of the Schedule in which the references appear; and

1.2.10 references to this Agreement are references to this Agreement as amended from time to time.

1.3 If there is any conflict between the Clauses and the Schedules and/or any Appendices to the Schedules (including the Supplier Terms of Business referenced in Appendix 4 of Schedule 4.1), the conflict shall be resolved in accordance with the following order of precedence:-

1.3.1 the Clauses and Schedule 1 (*Definitions*);

1.3.2 Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Appendices;

1.3.3 any other Schedules and their Appendices (other than Schedule 4.1 (*Supplier Solution*) and its Appendices); and

1.3.4 Schedule 4.1 (*Supplier Solution*) and its Appendices (if any).

1.4 The Schedules and their Appendices form part of this Agreement.

1.5 In entering into this Agreement the Authority is acting as a central purchasing body for the purposes of the Public Contracts Regulations 2015.

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 Agreement;

2.1.2 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to the Authority Requirements and the operating processes and procedures and the working methods of the Authority and the Service Recipients which has been provided by the Authority.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any misinterpretation of the Authority Requirements and/or any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. **WARRANTIES**

3.1 The Authority represents and warrants that:-

3.1.1 it has full capacity and authority to enter into and to perform this Agreement; and

3.1.2 this Agreement is executed by its duly authorised representative.

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 full capacity and authority to enter into and to perform this Agreement;

3.2.3 this Agreement is executed by its duly authorised representative;

3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;

- 3.2.5 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire, Invitation to Submit Initial 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 Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- 3.2.6 it has all necessary rights for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- 3.2.7 it has notified the Authority in writing of any Occasions of Tax Non-compliance- and any litigation in which it is involved that is in connection with any Occasion of Tax Non-compliance-;
- 3.2.8 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;
- 3.2.9 there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date by reference to the facts then existing.
- 3.4 The fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.5 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4. TERM

4.1 This Agreement shall:-

4.1.1 come into force on the Effective Date; and

4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 29 (*Termination Rights*), terminate:-

- (a) at the end of the Initial Term; or
- (b) if the Authority elects to extend the Initial Term by giving the Supplier at least ninety (90) days' notice before the end of the Initial Term, at the end of the First Extension Period; or
- (c) if the Authority elects to extend the Extended Term by giving the Supplier at least ninety (90) days' notice before the end of the First Extension Period, at the end of the Second Extension Period.

5. SERVICES

Standard of Services

- 5.1 The Supplier shall provide (for the benefit of the Authority and Service Recipients):-
- 5.1.1 the Implementation Services from (and including) the Implementation Services Commencement Date;
 - 5.1.2 the Operational Services in each case from (and including) the relevant Operational Service Commencement Date; and
 - 5.1.3 the Projects when commissioned by the Authority or a Service Recipient in accordance with the process set out in the Change Control Procedure.
- 5.2 The Supplier shall ensure that the Services:-
- 5.2.1 comply in all respects with the Services Description; and
 - 5.2.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement.
- 5.3 The Authority may require the Supplier to provide any or all of the Services to (and for the benefit of) any or all of the Service Recipients at any time during the Term.
- 5.4 The Supplier shall perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:-
- 5.4.1 all applicable Law;
 - 5.4.2 Good Industry Practice;
 - 5.4.3 the Standards; and
 - 5.4.4 Schedule 2.4, noting the preamble.
- 5.5 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.4.1 to [Error! Reference source not found.](#), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

- 5.6 The Supplier shall:-
- 5.6.1 at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Agreement;
 - 5.6.2 ensure that:-
 - (a) it shall continue to have all necessary rights for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority and any Service Recipient;
 - 5.6.3 ensure that any Documentation and training provided by the Supplier to the Authority and all Service Recipients are comprehensive, accurate and prepared in accordance with Good Industry Practice;

- 5.6.4 to the extent specified in the Authority Requirements, co-operate with the Other Suppliers as specified in the Authority Requirements and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to them;
- 5.6.5 provide the Authority and Service Recipients with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.6.6 notify the Authority in writing as soon as reasonably possible and in any event within one month of any change of Control taking place which has a likely or anticipated adverse impact on the Services); and
- 5.6.7 notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement.

Software warranty

- 5.6.8 Not used

Continuing obligation to provide the Services

- 5.7 Subject to clause **Error! Reference source not found.**, the Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:-
 - 5.7.1 the existence of an unresolved Dispute; and/or
 - 5.7.2 any failure by the Authority to pay any Charges provided that the Supplier reserves the right to suspend all or part of the Services: (a) if the Authority is ninety (90) days or more overdue on a payment, and provided that it has been prior written notice the overdue status of account at least twice, no closer than five (5) business days apart and a warning of such upcoming suspension at least five (5) business days before suspending the Service,
- 5.8 If the Supplier acting reasonably deems a suspension of the Services necessary to avoid material harm to the Supplier or its other customers, including if the Service is experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of its control, or (c) is required by law or at the request of governmental entities then the Supplier may suspend the Services for as short a period as absolutely necessary to address the above. In the case of a potential suspension pursuant to (c) or (d) above, Supplier will wherever possible notify the Authority in advance of the intended suspension and the reason for it.

Authority Responsibilities

- 5.9 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

6. IMPLEMENTATION

Implementation Plan and Delays

- 6.1 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*).

7. KEY PERFORMANCE INDICATORS

- 7.1 The Supplier shall:-
 - 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator; and

- 7.1.2 comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Key Performance Indicators.

KPI Failures

- 7.2 If in any Service Period a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with paragraph 3 of Part 3 of Schedule 7.1 (Charges and Invoicing)
- 7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:-
- 7.3.1 the KPI Failure:-
- (a) breaches the relevant KPI Service Threshold;
 - (b) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - (c) results in:-
 - (i) the corruption or loss of any Authority Data (in which case the remedies under Clause 0 (Authority Data and Security Requirements) shall also be available); and/or
 - (ii) the Authority being required to make a compensation payment to one or more third parties;
 - (iii) the Supplier has fraudulently misreported its performance against any Key Performance Indicator; and/or
 - (d) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 29.1.2 (Termination by the Authority).

Critical Performance Failure

- 7.4 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement pursuant to Clause 29.1 or 29.2 (*Termination by the Authority*).

8. SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Authority both on its Product Roadmap from time to time and, in addition, once every twelve (12) months on:-
- 8.1.1 the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Supplier and the Authority and Service Recipients;
 - 8.1.2 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties
- 8.2 The Supplier shall determine from time to time which of these improvements will be implemented.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

9. FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 9.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 9.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement including under, 11 (*Records, Reports, Audits and Open Book Data*), 21 (*Transparency and Freedom of Information*) and 22 (*Protection of Personal Data*).
- 9.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, 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.

VAT

- 9.4 The 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 VAT invoice.
- 9.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 9.5 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.
- 9.6 Without limiting Clause 9.1, the Charges shall be inclusive of all duties and taxes other than VAT.

Set-off and Withholding

- 9.7 Not used.

Financial Reporting and Financial Distress

- 9.8 If, following any notification under Clause **Error! Reference source not found.**, the Authority is concerned about the Supplier's financial condition, the Supplier shall, on the Authority's written request, meet with the Authority within ten (10) Working Days of such request to discuss in good faith, but on a without prejudice basis, its concerns and how they might be addressed.
- 9.9 The Authority shall have the rights set out in Clause 9.10 if:
- 9.9.1 the credit rating of the Supplier falls below the Credit Rating Threshold; or
 - 9.9.2 the Supplier breaches any of its borrowing covenants; or
 - 9.9.3 the Authority reasonably believes the Supplier financial health is having or may have a material adverse impact on the continued performance and delivery of the Services.
- 9.10 The rights referred to in Clause 9.9 are as follows:
- 9.10.1 the right to require an increased level of reporting as against the reporting requirements described in Clause 9.7 for a period of time as specified by the Authority; and/or

9.10.2 the right to require a Service Continuity Plan to be put in place and implemented by the Supplier to manage and mitigate the risks arising from its financial standing; and/or

9.10.3 the right to require the Supplier's Chief Financial Officer (or appropriate delegate) to meet with the Authority to discuss the event and the impact on the Services and this Agreement within ten (10) Working Days of the request; and/or

9.10.4 the right to require the Supplier to submit Corporate Resolution Planning Information.

9.11 Without prejudice to its other rights under this Agreement if a Financial Distress Event subsists for a period of forty (40) Working Days or more, and Service Credits due reach or exceed the equivalent of twenty (20) Service Points for three (3) consecutive months in any rolling twelve (12) month period; the such circumstance shall constitute a material Default which is irremediable for the purposes of paragraph (b) of the definition of Supplier Termination Event.

Promoting Tax Compliance

9.12 If, at any point during the Term, an Occasion of Tax Non--Compliance occurs, the Supplier shall:-

9.12.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

9.12.2 promptly provide to the Authority:-

- (a) details of the steps which 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.

SECTION D - CONTRACT GOVERNANCE

10. GOVERNANCE

10.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

Representatives

10.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11. RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

11.1 The Supplier shall comply with the provisions of:-

11.1.1 Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and

11.1.2 Part 1 of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

11.2 The Parties shall comply with the provisions of:-

11.2.1 Part 2 of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

11.2.2 Part 3 of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

12. CHANGE

Change Control Procedure

12.1 Any requirement for a Change shall be agreed by the parties and documented in writing.

Change in Law

12.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:-

12.2.1 a General Change in Law; or

12.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

12.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 12.2.2), the Supplier shall:-

12.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:-

(a) whether any Change is required to the Services, the Charges or this Agreement; and

12.3.2 provide the Authority with evidence:-

(a) 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;

(b) as to how the Specific Change in Law has affected the cost of providing the Services; and

(c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (Services Improvement), has been taken into account in amending the Charges.

12.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 12.2.2) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

13. SUPPLIER PERSONNEL

13.1 The Supplier shall:-

13.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

13.1.2 ensure that all Supplier Personnel:-

(a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

- (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*); and
- (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);

13.1.3 subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority; and

13.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier.

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

13.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or

13.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Employment Indemnity

13.3 The Supplier shall both during and after the Term indemnify the Authority and Service Recipients against all Employee Liabilities that may arise as a result of any claims brought against the Authority or a Service Recipient by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

Income Tax and National Insurance Contributions

13.4 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 Agreement, the Supplier shall:-

13.4.1 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

13.4.2 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 in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

13.5 The Parties agree that:-

13.5.1 commencement of the provision of the Services or a part of the Services is not anticipated by the Parties to result in a Relevant Transfer and accordingly Part C of Schedule 9.1 (*Staff Transfer*) shall apply; and

13.5.2 Part E of Schedule 9.1 (*Staff Transfer*) shall apply in relation to the expiry or termination of the Services or any part of the Services.

14. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 14.1 The Supplier shall not appoint any Sub-contractor without the Authority's prior written consent.
- 14.2 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 14, 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. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.
- 14.3 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.

Supply chain protection

- 14.4 The Supplier shall ensure that all Sub-contracts (which in this Clause 14.4 includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:-
- 14.4.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
- 14.4.2 where relevant to the Sub-contractor concerned, obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
- (a) data protection requirements set out in Clause 19 (*Authority Data and Security Requirements*) and 22 (*Protection of Personal Data*);
 - (b) FOIA requirements set out in Clause 21 (*Freedom of Information*);
 - (c) the conduct of Audits set out in Part 3 of Schedule 7.5 (*Financial Reports and Audit Rights*); and
- 14.4.3 a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Sub-contract without the Supplier first obtaining the written consent of the Authority.
- 14.5 The Supplier shall:-
- 14.5.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Such verification to take place within a reasonable period not exceeding ten (10) Working Days following receipt by the Supplier of an invoice from a Sub-contractor;

Termination of Sub-contracts

- 14.6 The Authority may require the Supplier to terminate a Sub-contract where the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 29.1.2 (*Termination by the Authority*).

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Except as expressly set out in this Agreement:-

15.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors.

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

- (a) the Authority Data; and
- (b) the Authority Background IPRs.

15.2 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 15.1, 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).

15.3 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.

16. NOT USED

17. LICENCES GRANTED BY THE AUTHORITY

17.1 The Authority hereby grants (or shall procure the grant) to the Supplier a royalty -free, non-exclusive, non-transferable licence during the Term to use the Authority Background IPRs and the Authority Data solely to the extent necessary for performing the Services, along with the access of NDA systems as required, in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:-

17.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Authority on the same terms as set out in Clause 20 (*Confidentiality*); and

17.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority and the Service Recipients.

17.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 17.1 and any sub-licence granted by the Supplier in accordance with Clause 17.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:-

17.2.1 immediately cease all use of the Authority Background IPRs and the Authority Data (as the case may be);

17.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Background IPRs and the Authority Data (as the case may be); and

17.2.3 ensure, so far as reasonably practicable, that any Authority Background IPRs and Authority Data that are held in electronic, digital or other machine -readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Background IPRs and/or Authority Data.

18. IPRS INDEMNITY

18.1 The Supplier shall at all times, during and after the Term, indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against an Indemnified Person arising from an IPRs Claim.

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

18.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

18.2.2 replace or modify the relevant item with non--infringing substitutes provided that:-

- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
- (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
- (d) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

18.3 If the Supplier elects to procure a licence in accordance with Clause 18.2.1 or to modify or replace an item pursuant to Clause 18.2.2, but this has not avoided or resolved the IPRs Claim, then the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier.

18.4 The Authority, and/or any other Indemnified Person, shall give the Supplier prompt notice of any IPRs Claim and shall reasonably cooperate and assist the Supplier in its management of the claim. Where the Authority, and/or any other Indemnified person, is indemnified in accordance with this clause 18, the Supplier shall have sole authority to defend or settle the claim as it considers appropriate.

19. AUTHORITY DATA AND SECURITY REQUIREMENTS

19.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

19.2 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 Agreement or as otherwise expressly authorised in writing by the Authority.

19.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority or relevant Service Recipient as requested by the Authority and in the format specified by the Authority.

19.4 The Supplier shall preserve the integrity of Authority Data and have appropriate technical and organisational measures in place to prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

19.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan and in any event not less than once in every twenty four (24) hours, seven (7) days a week.

19.6 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 Requirements.

If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the last available backup 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.

19.7 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become 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.

19.8 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements and the parties shall work together to explore if and how any changes to the Services could be implemented.

20. **CONFIDENTIALITY**

20.1 For the purposes of this Clause 20, the term "Disclosing Party" shall mean a Party (including for the purposes of this Clause 20 (*Confidentiality*), only, each Service Recipient) which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party (including for the purposes of this Clause 20 (*Confidentiality*), only, each Service Recipient) which receives or obtains directly or indirectly Confidential Information.

20.2 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:-

20.2.1 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);

20.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

20.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

20.2.4 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.

20.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:-

20.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 21 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

20.3.2 the need for such disclosure arises out of or in connection with:-

(a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;

(b) the examination and certification of the Authority's or a Service Recipient'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

OFFICIAL

economy, efficiency and effectiveness with which the Authority or a Service Recipient is making use of any Services provided under this Agreement; or

- (c) the conduct of a Central Government Body review in respect of this Agreement; or

20.3.3 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.

20.4 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.

20.5 The Supplier may disclose the Confidential Information of the Authority or a Service Recipient on a confidential basis only to:-

20.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;

20.5.2 its auditors; and

20.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority or a Service Recipient pursuant to this Clause 20.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

20.6 The Authority and each Service Recipient may disclose the Confidential Information of the Supplier:-

20.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority, the Service Recipient or of the relevant Central Government Body;

20.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

20.6.3 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 20.6.1 for any purpose relating to or connected with this Agreement;

20.6.4 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights;

20.6.5 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement;

20.6.6 between Service Recipients and the Authority and vice versa; and/or

20.6.7 to any Other Supplier, on a confidential basis, with prior agreement of the Supplier

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 and Service Recipients under this Clause 20.

21. TRANSPARENCY AND FREEDOM OF INFORMATION

- 21.1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Supplier agrees that the Agreement and the Tender Documents will be published by the Authority on a designated web site save where to do so would disclose information the disclosure of which would:
- 21.1.1 contravene the provisions of Clause 20 (*Confidentiality*);
 - 21.1.2 be contrary to regulation 21 of the Public Contracts Regulations 2015; or
 - 21.1.3 in the reasonable opinion of the Authority be prevented by virtue of one or more of the exemptions in the Freedom of Information Act 2000 or one or more of the exceptions in the Environmental Information Regulations 2004.
- 21.2 If any of the situations in Clauses 21.1.1 to 21.1.3 apply, the Supplier consents to the Agreement or Tender Documents being redacted by the Authority in consultation with the Supplier to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.
- 21.3 In order to comply with the Government's policy on transparency in the area of contract performance the Supplier agrees that performance against KPI 1, KPI 9 and KPI 10 of Schedule 2.2 (*Performance Levels*) will be published by the Authority on a designated web site save where to do so would disclose information the disclosure of which would:
- 21.3.1 contravene the provisions of Clause 20 (*Confidentiality*);
 - 21.3.2 be contrary to regulation 21 of the Public Contracts Regulations 2015; or
 - 21.3.3 in the reasonable opinion of the Authority be prevented by virtue of one or more of the exemptions in the Freedom of Information Act 2000 or one or more of the exceptions in the Environmental Information Regulations 2004.
- 21.4 The Authority shall agree with the Supplier the Supplier's performance against KPI 1, KPI 9 and KPI 10 in advance of any publication.
- 21.5 The Supplier acknowledges that the Authority and Service Recipients are subject to the requirements of the FOIA and the EIRs. The Supplier shall:-
- 21.5.1 provide all necessary assistance and cooperation as reasonably requested by the Authority and Service Recipients to enable the Authority and Service Recipients to comply with its obligations under the FOIA and EIRs;
 - 21.5.2 transfer to the Authority (or at the Authority's request the relevant Service Recipient) all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 21.5.3 provide the Authority (or at the Authority's request the relevant Service Recipient) with a copy of all Information held on behalf of the Authority and Service Recipients which is requested in a Request For Information and which is in its possession or control in the form that the Authority or Service Recipient requires within five (5) Working Days (or such other period as the Authority or Service Recipient may reasonably specify) of the Authority's or Service Recipient's request for such Information; and
 - 21.5.4 not respond directly to a Request For Information addressed to the Authority or a Service Recipient unless authorised in writing to do so by the Authority.
- 21.6 The Supplier acknowledges that the Authority or a Service Recipient 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 or Service Recipient 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.

21.7 The Authority and any Service Recipient shall

21.7.1 consult with the Supplier in accordance with the relevant Law or codes of practice before disclosing or publishing any information under the FOIA which relates in any way to the Supplier or the Contract;

21.7.2 allow the Supplier sufficient opportunity to make representations as to whether the information is subject to any applicable exemption including, but not limited to, confidentiality (Section 41 FOIA), trade secrets (Section 43 FOIA) and prejudice to commercial interests (Section 43 FOIA), subject to such representations being made within a reasonable timeframe to enable the Authority to meet their obligations within the Information Legislation; and

21.7.3 have regard to the confidential nature of any information relating to the Supplier or the Contract in making decisions about disclosure of information under the Information Legislation

21.8 Notwithstanding any other provision in this Agreement the Authority or Service Recipient shall be responsible for determining in its absolute discretion whether any information (including Commercially Sensitive Information) is exempt from disclosure in accordance with the FOIA and EIRs.

22. **PROTECTION OF PERSONAL DATA**

Arrangement between the Parties

22.1 The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate that during the term of the Agreement:-

22.1.1 the Authority and/or applicable Service Recipient shall be the Controller of the (i) Authority Personal Data, (ii) Authority's Contact Data for its own internal business purposes and (ii) where it is Processed by the Authority in accordance with Clause 22.2, the Supplier's Contact Data;

22.1.2 the Supplier shall be the Controller of the (i) Supplier's Contact Data for its own internal business purposes and (ii) where the Authority's Contact Data is Processed by it in accordance with Clause 22.2, the Authority's Contact Data; and

22.1.3 the Supplier shall be the Processor in relation to its Processing of the Authority Personal Data which have been made available to the Supplier by the Authority (whether directly or indirectly) for the purpose of performing the Services.

22.2 The Parties each acknowledge and agree that they may need to Process Contact Data (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Services; (b) request and receive the Services; (c) compile, dispatch and manage the payment of invoices relating to the Services; (d) manage the Agreement and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Services; and (f) comply with their respective regulatory and other compliance obligations.

22.3 Each Party shall Process the other Party's Contact Data for the purposes set out in Clause 22.2 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share the other Party's Contact Data with their Affiliates and other relevant parties, within the UK, in order to carry out the activities listed in Clause 22.2, and in doing so each Party will ensure that the sharing and use of this Contact Data complies with applicable Data Protection Legislation.

22.4 The Supplier shall comply at all times with the DPA and shall not perform its obligations under this

Agreement in such a way as to cause the Supplier or the Authority or Service Recipients to breach any of their respective obligations under the DPA.

22.5 Each of the Parties acknowledges and agrees that the Appendix to the Supplier Solution contains an accurate description of:-

22.5.1 the subject matter of the Processing;

22.5.2 the duration of the Processing;

22.5.3 the nature and purpose of the Processing;

22.5.4 the type of Personal Data being Processed; and

22.5.5 the categories of Data Subjects.

Processor Obligations

22.6 Where the Supplier is processing Personal Data as a Processor for the Authority and/or Service Recipients, the Supplier shall:-

22.6.1 process the Personal Data only for the purpose of performing its obligations under this Agreement or otherwise on the instructions of the Authority or relevant Service Recipient. Unless prohibited by law, if the Supplier is required by UK Law to act other than in accordance with the instructions of the Authority or relevant Service Recipient, the Supplier shall (unless prohibited by such law) promptly, and in any event within twenty-four (24) hours of becoming aware of the same, notify the Authority and relevant Service Recipient;

22.6.2 hold the Authority Personal Data it is processing on behalf of the Authority and/or Service Recipients separately from other data or information processed by the Supplier;

22.6.3 implement appropriate technical and organisational measures to safeguard the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure which are sufficient to comply with the obligations placed upon Authority or Service Recipient (as Controller) and the Supplier (as Processor) in accordance with the Data Protection Legislation and those under this Agreement (including the measures set out in the Authority Requirements) and upon request provide to the Authority evidence of its compliance with such requirements;

22.6.4 ensure that all employees or agents required to access the Personal Data are informed of the confidential nature of the Personal Data and have entered into an appropriate contractual agreement that requires them to keep the Personal Data confidential;

22.6.5 when sub-contracting any Processing of the Personal Data, or replacing an existing sub-contractor who is Processing the Personal Data or altering the scope or location of Processing carried out by an existing sub-contractor (a "**sub-processing change**"):-

- (a) the Supplier will give the Authority not less than sixty (60) days' written notice of the relevant sub-processing change;
- (b) the Supplier will have undertaken due diligence on the sub-contractor with all due skill and care, including a risk assessment of the information governance related practices and processes of the sub-contractor and has established that the outcome of the due diligence is a determination that the sub-contractor and the arrangements made for the sub-processing would objectively be adequate and sufficient to ensure compliance with the applicable requirements of the DPA, and have given notice of the outcome to the Authority;
- (c) the Supplier undertakes to ensure that the sub-processing contract will be on terms that are substantially the same as the terms set out in this Clause 22; and

OFFICIAL

- (d) if the Authority objects to the use of the sub-processor within the period of notice provided by the Supplier (or if longer, the period of sixty (60) days following service of notice), it shall have the right to terminate this Agreement;

22.6.6 notify the Authority promptly (and in any event within five (5) Working Days) following its receipt from a Data Subject, the Information Commissioner or any third party of a request, complaint, communication or Regulator Correspondence and:-

- (a) not disclose any Personal Data in response to any such request or correspondence without the consent of the Authority;
- (b) provide the Authority with full co-operation and assistance (including providing copies of all data held) as required by the Authority in relation to any such complaint or request made or Regulator Correspondence received; and
- (c) provide data promptly and so as to enable the Authority and each Service Recipient to comply with any relevant timescales set out in the Data Protection Legislation and otherwise in accordance with the Authority's and relevant Service Recipient's instructions;

22.6.7 notify the Authority promptly and in any event within twelve (12) (but no later than twenty four (24) hours upon becoming aware of any actual or suspected breach of Clause 22.6.3 and:-

- (a) promptly provide the Authority with a report containing all the circumstances and details in relation to the Personal Data breach, including those specified in Article 33(3) of the GDPR;
- (b) assist the Authority and Service Recipients to make any notifications to the Information Commissioner and affected Data Subjects and co-operate with the Authority, Service Recipients, the Information Commissioner and any other regulatory bodies as required;
- (c) provide any information requested by the Authority, Service Recipients, the Information Commissioner and/or any other regulatory bodies in relation to the breach;
- (d) investigate the incident and its cause;
- (e) seek to recover the compromised data and as soon as practicable and implement any measures necessary to restore the security of the Personal Data;
- (f) comply with all applicable guidance (including Information Commissioner guidance);
- (g) co-ordinate with the Authority with respect to the management of public relations and public statements relating to the incident and make no public statement in relation to the incident unless the Authority has provided its specific written consent to such statement;

22.6.8 provide the Authority with full cooperation and assistance to ensure compliance with its obligations under the DPA including:-

- (a) obligations relating to the security and integrity of the Personal Data; and
- (b) undertaking any data protection impact assessments (as required by the DPA);

22.6.9 notify the Authority immediately if it considers in its opinion any of its instructions infringe the DPA;

22.6.10 not transfer any Personal Data outside the United Kingdom without prior notification to the Authority in writing and subject to the appropriate safeguards, for example including incorporating the Standard Contractual Clauses and/or a direct data processing agreement; and

22.6.11 upon the expiry or termination of the Agreement or otherwise at any time where required by at Authority's option or direction, arrange for the prompt and safe return and/or secure permanent destruction (in accordance with HMG IA Standard No. 5 Secure Sanitisation of Protectively Marked or Sensitive Information) of any and/or all Authority Personal Data, together with all copies in its or its sub-contractors' possession or control within seven (7) days and, where requested by the Authority, certify that such destruction has taken place.

Variation

22.7 If at any time, in the Authority's opinion, the Authority needs to amend this Agreement in order to comply with its obligations under Data Protection Legislation, including Article 28 of the GDPR, the Supplier agrees to enter into a written variation of this Agreement to make the amendments which in the Authority's opinion are required. In the event such amendments are not able to be agreed, the Parties acknowledge and agree that no further Processing of the Personal Data under this Agreement will be carried out until such variation has been agreed and executed unless directed otherwise by the Authority in writing and then in those circumstances the Supplier may only continue to Process Authority Data in accordance with the Authority's written directions

23. PUBLICITY AND BRANDING

23.1 The Supplier shall not:-

23.1.1 make any press announcements or publicise this Agreement or its contents in any way;
or

23.1.2 use the Authority's or a Service Recipient's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

23.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

24. LIMITATIONS ON LIABILITY

Unlimited liability

24.1 Neither Party limits its liability for:-

24.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);

24.1.2 fraud or fraudulent misrepresentation by it or its employees; or

24.1.3 any liability to the extent it cannot be limited or excluded by Law.

24.2 The Supplier's liability in respect of the indemnities in Clause 9.5 (VAT), Clause 13.3 (*Employment Indemnity*) and Clause 13.4 (*Income Tax and National Insurance Contributions*) shall be unlimited.

Financial and other limits

24.3 Subject to Clauses 24.1 and 24.2 (*Unlimited Liability*) and Clauses 24.5 and **Error! Reference source not found.** (*Consequential losses*):-

24.3.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority or a Service Recipient (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £2,000,000 (two million pounds);

24.3.2 the Supplier's aggregate liability in respect of Clause 18 (*IPRs Indemnity*) and Schedule 9.1 (*Staff Transfer*) that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £3,000,000 (three million pounds);

24.3.3 the Supplier's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £3,000,000 (three million pounds);

24.3.4 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority and Service Recipients under or in connection with this Agreement by the Supplier shall in no event exceed: -

- (a) during each Contract Year, an amount equal to £1,500,000 (one million five hundred thousand pounds);
- (b) after the end of the Term, an amount equal to £1,500,000 (one million five hundred thousand pounds).

24.4 Subject to Clause 24.1 (*Unlimited Liability*) and Clause 24.5 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

24.4.1 the Authority's and Service Recipients' total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 29.1.1 (*Termination by the Authority*) Supplier pursuant to Clause 29.5 (*Termination by the Supplier*) shall in no event exceed £1,500,000 (one million five thousand pounds).

24.4.2 the Authority's and Service Recipients' aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority or Service Recipients shall in no event exceed £1,500,000 (one million five hundred thousand pounds) per Contract Year.

Consequential Losses

24.5 Subject to Clauses 24.1 and 24.2 (*Unlimited Liability*) and Clause **Error! Reference source not found.**, neither Party shall be liable to the other Party for:-

24.5.1 any indirect, special or consequential Loss; or

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

24.6 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply (and the Authority shall procure that any Service Recipient complies) with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party or Service Recipient having (or claiming to have) the benefit of the indemnity.

Mitigation

24.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

25. INSURANCE

The Supplier shall comply with the provisions of Schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H – REMEDIES AND RELIEF

26. NOT USED

27. AUTHORITY CAUSE

27.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to comply with its obligations under this Agreement, ("**Supplier Non-Performance**"), and can demonstrate that the Supplier Non-performance- would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause [Error! Reference source not found.](#)):-

- (a) the Supplier shall not be treated as being in breach of this Agreement 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 Agreement pursuant to Clause 29.1.2 (*Termination by the Authority*);
- (c) where the Supplier Non-performance- constitutes a Performance Failure:-
 - (i) the Supplier shall not be liable to accrue Service Credits; and
 - (ii) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

27.2 In order to claim any of the rights and/or relief referred to in Clause 27.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-performance-, give the Authority notice (a "**Relief Notice**") setting out details of:-

27.2.1 the Supplier Non-performance-;

27.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

27.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

27.2.4 the relief claimed by the Supplier.

27.3 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.

- 27.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including the duration and consequences of any Delay or anticipated Delay.
- 27.5 Without prejudice to Clause 5.7 (*Continuing obligation to provide the Services*), if a Dispute arises as to:-
- 27.5.1 whether a Supplier Non-performance- would not have occurred but for an Authority Cause; and/or
- 27.5.2 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-.
- 27.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause **Error! Reference source not found.** shall be implemented in accordance with the Change Control Procedure.
28. **FORCE MAJEURE**
- 28.1 Subject to the remaining provisions of this Clause 28 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan*)), a Party may claim relief under this Clause 28 from liability for failure to meet its obligations under this Agreement 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 Agreement 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.
- 28.2 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.
- 28.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 28 to the extent that consequences of the relevant Force Majeure Event:-
- 28.3.1 are capable of being mitigated by any of the Services including the Service Continuity Services and the obligation to ensure that the Software complies with the security requirements under this Agreement (including with respect to the security of the Authority Data), but the Supplier has failed to do so; and/or
- 28.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 28.4 Subject to Clause 28.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 28.5 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.

28.6 Where, as a result of a Force Majeure Event:-

28.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:-

- (a) where the Affected Party is the Supplier, the Authority shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 29.1.3 (Termination by the Authority); and
- (b) neither Party shall be liable for any Default arising as a result of such failure;

28.6.2 the Supplier fails to perform its obligations in accordance with this Agreement, the Authority shall not be entitled to receive Service Credits to the extent that a Performance Failure has been caused by the Force Majeure Event;

28.6.3 the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

28.7 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 Agreement.

28.8 Relief from liability for the Affected Party under this Clause 28 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 Agreement and shall not be dependent on the serving of notice under Clause 28.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

29. TERMINATION RIGHTS

Termination by the Authority

29.1 The Authority may terminate this Agreement in whole or part by issuing a Termination Notice to the Supplier:-

29.1.1 for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under UK Law;

29.1.2 if a Supplier Termination Event occurs;

29.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

29.1.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

29.2 Where the Authority:-

29.2.1 has the right to terminate this Agreement under Clause 29.1.1 (*Termination by the Authority*), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement, including any part of the provision of the Services or the provision of the Services to any Service Recipient; and/or

29.2.2 is terminating this Agreement under Clause 29.1.2 due to the occurrence of either paragraph (b) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different

obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

29.2.3 has the right to terminate this Agreement under Clause 29.1.2 or Clause 29.1.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

29.3 Where a Service Recipient wishes to cease receiving services from the Supplier, it shall engage with the Authority who may exercise its rights under this clause 29 to give effect to a partial termination of this Agreement.

29.4 Partial Termination will not affect the Charges due to the Supplier.

Termination by the Supplier

29.5 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Agreement in whole or part if (i) the Authority fails to pay an undisputed sum due to the Supplier under this Agreement and such amount remains outstanding ninety (90) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier and provided that it has been prior written notice the overdue status of account at least twice, no closer than five (5) business days apart and a warning of such upcoming termination at least five (5) business days before terminating the Service or (ii) is otherwise in breach of this agreement and the Authority fails to remedy such breach within (40) Working Days after receipt of notice by the Supplier. Following such Termination Notice, this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than forty (40) Working Days from the date of the issue of the Termination Notice).

30. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

30.1 The provisions of Clauses , 9.4 and 9.5 (VAT), 11 (*Records, Reports, Audits and Open Book Data*), 13.3 (*Employment Indemnity*), 13.4 (*Income Tax and National Insurance Contributions*), 15 (*Intellectual Property Rights*), **Error! Reference source not found.** (*Licences Granted by the Supplier*), 18.1 (*IPRs Indemnity*), 20 (*Confidentiality*), 21 (*Transparency and Freedom of Information*), 22 (*Protection of Personal Data*), 24 (*Limitations on Liability*), 30 (*Consequences of Expiry or Termination*), 36 (*Severance*), 38 (*Entire Agreement*), 39 (*Third Party Rights*), 41 (*Disputes*) and 42 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.5 (*Financial and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*) and 9.1 (*Staff Transfer*), and each Party's accrued rights and liabilities, shall survive the termination or expiry of this Agreement.

Exit Management

30.2 The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

30.3 If this Agreement is terminated by the Authority pursuant to Clause 29.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 29.5 (*Termination by the Supplier*), the Authority shall pay the Supplier the sum specified in Clause 24.4.1 (*Financial and other Limits*) (which shall be the Supplier's sole remedy for the termination of this Agreement).

30.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 29.1.1, 29.1.3 and/or 29.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation

or otherwise) are payments in respect of unpaid Charges for Services received up until the Termination Date.

30.5 The costs of termination incurred by the Parties shall lie where they fall if:-

30.5.1 the Authority terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 29.1.3 or 29.2.3 (*Termination by the Authority*); or

30.5.2 the Authority terminates this Agreement under Clause 29.1.4.

Payments by the Supplier

30.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

31. COMPLIANCE

Health and Safety

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

31.1.1 all applicable Law regarding health and safety; and

31.1.2 the Health and Safety Policy whilst at the Authority Premises.

31.2 Each Party shall notify the other as soon as practicable 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 Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

31.3 The Supplier shall:-

31.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:-

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
- (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority or Service Recipients at any time under applicable equality Law;

31.3.2 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).

Modern Slavery Act 2015

- 31.4 In performing its obligations under this agreement, the Supplier shall:
- 31.4.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
 - 31.4.2 have and maintain throughout the term its own policies and procedures to ensure compliance;
 - 31.4.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom; and
 - 31.4.4 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom.
- 31.5 The Supplier represents, warrants and undertakes that neither it nor any of its officers, employees or other persons associated with it:
- 31.5.1 has been convicted of any offence involving slavery and human trafficking; and
 - 31.5.2 has been or is the subject of any investigation, inquiry or enforcement proceeding by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 31.6 The supplier shall implement due diligence procedures for its sub-contractors, suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 31.7 Any breach of this clause 31.4 by the supplier shall constitute a material breach of this agreement.

Official Secrets Act and Finance Act

- 31.8 The Supplier shall comply with the provisions of:-
- 31.8.1 the Official Secrets Acts 1911 to 1989; and
 - 31.8.2 section 182 of the Finance Act 1989.

32. ASSIGNMENT AND NOVATION

- 32.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 32.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement to:-
- 32.2.1 any Central Government Body; or
 - 32.2.2 to a body other than a Central Government Body (including any private sector body, save that the prior written consent of the Supplier shall be required for an assignment or novation to a private sector body) which performs any of the functions that previously had been performed by 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 32.2.

32.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 32.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

32.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body, with the consent of the Supplier, or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under paragraph (h) of the definition of Supplier Termination Event (as if references in that paragraph (h) to the Supplier were references to the Successor Body).

33. **WAIVER AND CUMULATIVE REMEDIES**

33.1 The rights and remedies under this Agreement may be waived only by notice 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 Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

33.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

34. **RELATIONSHIP OF THE PARTIES**

34.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, 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.

34.2 Notwithstanding anything to the contrary in this Agreement, the Supplier acknowledges that it is not, and nor will it be, the exclusive supplier of the Services or any other similar goods and services to the Authority and/or the Service Recipients and that the Authority and Service Recipients may perform, or engage a third party to provide any or all of the Services or any similar services.

35. **PREVENTION OF FRAUD AND BRIBERY**

35.1 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 Effective Date:-

35.1.1 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

35.1.2 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.

35.2 The Supplier shall not during the term of this Agreement:-

35.2.1 commit a Prohibited Act; and/or

35.2.2 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.

35.3 The Supplier shall during the term of this Agreement:-

35.3.1 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;

35.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;

35.3.3 keep appropriate records of its compliance with its obligations under Clause 35.3.1 and make such records available to the Authority on request; and

35.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.

35.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 35.1 and/or 35.2, or has reason to believe that it has or any of the Supplier Personnel have:-

35.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

35.4.2 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

35.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

35.5 If the Supplier makes a notification to the Authority pursuant to Clause 35.4, 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 11 (Records, Reports, Audits and Open Book Data).

35.6 If the Supplier is in Default under Clauses 35.1 and/or 35.2, the Authority may by notice:-

35.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or

35.6.2 immediately terminate this Agreement.

35.7 Any notice served by the Authority under Clause 35.6 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 Agreement shall terminate).

36. **SEVERANCE**

If any provision of this Agreement (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 Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

37. **FURTHER ASSURANCES**

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 reasonably necessary to give effect to the meaning of this Agreement.

38. **ENTIRE AGREEMENT**

38.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

38.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

38.3 Nothing in this Clause 38 shall exclude any liability in respect of misrepresentations made fraudulently.

39. **THIRD PARTY RIGHTS**

39.1 Subject to the appropriate dispute resolution procedures set out in this Agreement for Service Recipients, the provisions of this Agreement confer benefits on the Service Recipients and, in addition, the provisions of Clause 18.1 (*IPRs Indemnity*), paragraphs 2.1, 2.6, 3.1 and 3.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (*Staff Transfer*) confer benefits on persons named in such provisions other than the Parties (such provisions together being referred to as "**Third Party Provisions**" and each Service Recipient and each such person being referred to as a "**Third Party Beneficiary**"). The Third Party Provisions are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

39.2 In respect of any Losses suffered by any or all of the Third Party Beneficiaries in connection with this Agreement:

39.2.1 such Losses shall be deemed to be suffered by the Authority and, to the extent they would be recoverable from the Supplier under this Agreement had they been Losses suffered by the Authority, shall be recoverable by the Authority against the Supplier; and

39.2.2 the exercise of any right or the commencement of civil proceedings shall be brought solely by the Authority unless it is expressly prevented by a first instance decision of the English courts from exercising a right or commencing civil proceedings in respect of any Losses or right of action on behalf of the relevant Third Party Beneficiary on the basis that the Authority is not an interested party.

39.3 Subject to Clauses 39.1 and 39.2, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

39.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 39.1, may be altered or extinguished by the Parties without the consent of any Third Party Beneficiary.

40. **NOTICES**

40.1 Any notices sent under this Agreement must be in writing.

40.2 Subject to Clause 40.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:-

Manner of Delivery	Deemed time of service	Proof of service
--------------------	------------------------	------------------

OFFICIAL

Email	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 that 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
Prepaid, Royal Mail Signed or 1st Class or other prepaid, next working day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 40.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:-

	Supplier	Authority
Contact	[Redacted]	[Redacted]
Address	Thinkproject UK Limited, Welland House, Meteor Court, Barnett Way, GL4 3GG	NDA, Hinton House, Birchwood Park Ave, Birchwood, Warrington WA3 6GR
Email	[Redacted]	[Redacted]

- 40.4 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 recorded delivery in the manner set out in the table in Clause 40.2:-

40.4.1 Force Majeure Notices;

40.4.2 notices issued by the Supplier pursuant to Clause 29.5 (*Termination by the Supplier*);

40.4.3 Termination Notices; and

40.4.4 Dispute Notices.

- 40.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 40.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For 1st Class delivery (as set out in the table in Clause 40.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 40.6 This Clause 40 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

41. DISPUTES

- 41.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 41.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

42. GOVERNING LAW AND JURISDICTION

- 42.1 This Agreement 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.
- 42.2 Subject to Clause 41 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*), 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 Agreement or its subject matter or formation.

43. COUNTERPARTS/DUPLICATES

- 43.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.
- 43.2 This Agreement may be executed in duplicate, each of which shall constitute an original.

IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

Signed for and on behalf of the NUCLEAR DECOMMISSIONING AUTHORITY:	<p>..... (Signed)</p> <p>[Redacted] (Name) Director</p>
Signed for and on behalf of THINKPROJECT UK LIMITED	<p>..... (Signed)</p> <p>[Redacted] (Name and position)</p>

LIST OF SCHEDULES

Schedule 1	Definitions
Schedule 2.1	Services Description
Schedule 2.2	Performance Levels
Schedule 2.3	Standards
Schedule 2.4	Security Management
Schedule 2.5	Insurance Requirements
Schedule 3	Authority Responsibilities
Schedule 4.1	Supplier Solution
Schedule 4.2	Commercially Sensitive Information
Schedule 5	Software
Schedule 6.1	Implementation Plan
Schedule 6.2	Milestone Achievement Procedure
Schedule 7.1	Charges and Invoicing
Schedule 7.2	Payments on Termination
Schedule 7.3	[Not used]
Schedule 7.4	[Not used]
Schedule 7.5	Financial Reports and Audit Rights
Schedule 8.1	Governance
Schedule 8.2	Change Control Procedure
Schedule 8.3	Dispute Resolution Procedure
Schedule 8.4	Reports and Records Provisions
Schedule 8.5	Exit Management
Schedule 8.6	Service Continuity Plan
Schedule 8.7	Conduct of Claim
Schedule 9.1	Staff Transfer
Schedule 10	[Not used]

SCHEDULE 1

Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

"Accounting Reference Date"	means the dates to which the Supplier prepares its audited financial statements;
"Additional Development"	means any unforeseen development tasks or projects post System implementation e.g. the implementation of an additional Application Programming Interface to an external government database.
"Additional Services"	mean any ad hoc requirements post System implementation e.g. changes to System branding or additional Authority training post System implementation.
"Affected Party"	means the Party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	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 with, that body corporate from time to time;
"Annual Contract Value"	means the Contract Award Value for the Term or Extension Period of the Agreement divided by the duration of that respective Term or Extension Period, e.g. the Annual Contract Value for an agreement with a four (4) year Term and Contract Award Value of £100,000 is equal to £25,000.
"Annual Revenue"	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:-</p> <p>(a) figures for accounting periods of other than twelve (12) months should be scaled pro rata to produce a proforma figure for a twelve (12) month period; and</p> <p>(b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;</p>
"Applicable Supplier Personnel"	<p>means any Supplier Personnel who:-</p> <p>a. at the Termination Date:-</p> <p>i. are employees of the Supplier</p> <p>ii. are Dedicated Supplier Personnel</p> <p>iii. have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations and</p> <p>b. are dismissed or given notice of dismissal by the Supplier within:-</p> <p>i. <u>forty (40)</u> Working Days of the Termination Date or</p> <p>ii. such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement and</p>

OFFICIAL

- c. have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier and
- d. the Supplier can demonstrate to the satisfaction of the Authority
 - i. are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers
 - ii. are genuinely being dismissed for reasons of redundancy and
 - iii. have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees.

"Application Programming Interface"

or "API" means a piece of software that facilitates access to the Supplier's application(s) to provide access to business functionality conforms to the Government Digital Service API technical and data standards set online at:

<https://www.gov.uk/guidance/gdsapitechnicalanddatastandards>

"Acquired Rights Directive"

means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

"Associated Person"

has the meaning given to it in section 44(4) of the Criminal Finances Act 2017;

"Associates"

means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

"Assurance"

means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;

"Audit"

means any exercise by the Authority of its Audit Rights pursuant to Clause 11 (*Records, Reports, Audit and Open Book Data*) and Schedule 7.5 (*Financial Reports and Audit Rights*);

"Audit Agents"

means:-

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions;
- (f) a Service Recipient or any person falling within the scope of Paragraphs (a), (b) or (e) with respect to the Service Recipient; and
- (g) successors or assigns of any of the above;

OFFICIAL

"Audit Rights"	means the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"Authority Assets"	means the Authority Materials, the Authority's or Service Recipient's infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority or any Service Recipient and which is or may be used in connection with the provision or receipt of the Services;
"Authority Background IPRs"	<p>means:-</p> <ul style="list-style-type: none">(a) IPRs owned by the Authority or a Service Recipient before the Effective Date, including IPRs contained in any of the Authority's or Service Recipient's knowhow, documentation, processes and procedures;(b) IPRs created by the Authority or a Service Recipient independently of this Agreement; and/or(c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;
"Authority Cause"	<p>means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:-</p> <ul style="list-style-type: none">(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
"Authority Data"	<p>means:-</p> <ul style="list-style-type: none">(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, and which are:-<ul style="list-style-type: none">(i) supplied to the Supplier by or on behalf of the Authority or a Service Recipient; and/or(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or(b) any Personal Data for which the Authority or a Service Recipient is the Data Controller;
"Authority Materials"	<p>means the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority or a Service Recipient to the Supplier, the IPRs in which:-</p> <ul style="list-style-type: none">(a) are owned or used by or on behalf of the Authority or a Service Recipient; and(b) are or may be used in connection with the provision or receipt of the Services, <p>but excluding any Licensed Software;</p>
"Authority Personal Data"	means the Authority Data that constitutes Personal Data (such being anticipated to fall within the scope of the description set out in the Appendix

to the Supplier Solution) where such Personal Data is Processed by either Party under this Agreement;

"Authority Premises"	means premises owned, controlled or occupied by the Authority, a Service Recipient and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
"Authority Representative"	means the representative appointed by the Authority pursuant to Clause 10.2 (<i>Representatives</i>), as notified to the Authority from time to time;
"Authority Requirements"	means the requirements of the Authority set out in Schedules 2.1 (<i>Services Description</i>), 2.2 (<i>Performance Levels</i>), 2.3 (<i>Standards</i>), 2.4 (<i>Security Management</i>), 2.5 (<i>Insurance Requirements</i>), 6.1 (<i>Implementation Plan</i>), 8.4 (<i>Reports and Records Provisions</i>), 8.5 (<i>Exit Management</i>) and 8.6 (<i>Service Continuity Plan</i>) and any relevant Changes;
"Authority Responsibilities"	means the responsibilities of the Authority specified in Schedule 3 (<i>Authority Responsibilities</i>);
"Authority System"	means the Authority's and Service Recipients' computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority, a Service Recipient or the Supplier in connection with this Agreement which is owned by the Authority or a Service Recipient or licensed to either of them by a third party and which interfaces with the Supplier System or which is necessary for the Authority and/or Service Recipients to receive the Services;
"Available"	has the meaning given in paragraph 1.2 of Part 2 of Appendix 1 in Schedule 2.2 (<i>Performance Levels</i>)
"Baseline Security Requirements"	means the Authority's baseline security requirements, the current copy of which is contained in Appendix 1 of Schedule 2.4 (<i>Security Management</i>), as updated from time to time by the Authority and notified to the Supplier;
"Beneficiary"	has the meaning given in paragraph 1.1 of Schedule 8.7 (<i>Conduct of Claims</i>);
"Breach of Security"	<p>means a material breach of security by the Supplier which results in</p> <ol style="list-style-type: none"> unauthorised third party or Supplier Personnel access to or use of the Services, the Authority Premises, the Sites, and/or any information or data (including the Confidential Information and the Authority Data) of a sensitive nature (to be determined by the Authority acting reasonably) used by the Authority, the Supplier or any Subcontractor in connection with this Agreement; unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data) of a sensitive nature (to be determined by the Authority acting reasonably), including copies of such information or data, used by the Authority, the Supplier or any Subcontractor in connection with this Agreement <p>which results in information of a materially sensitive nature</p>
"Breakage Costs Payment"	an amount equal to the Contract Breakage Costs as at the Termination Date as determined in accordance with paragraph 3 of Schedule 7.2 (Payments on Termination);
"Business Continuity Plan"	has the meaning given in paragraph 1.2.1(b) of Schedule 8.6 (<i>Service Continuity Plan</i>);

OFFICIAL

"Cabinet Office Markets and Suppliers Team"	means the UK government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
"Call Answering Time"	means the time taken for a Help Desk operative to answer a voice call, i.e. not a voicemail automatic answering service
"CaSIE"	means government's Contracts and Spend Insight Engine online tool, developed on the Microsoft Power BI application to analyse contract and spend data across the public sector.
"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU.
"Central Government Body"	<p>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:-</p> <ul style="list-style-type: none">(a) Government Department;(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(c) Non-Ministerial Department; or(d) Executive Agency;
"Certification Requirements"	means the requirements set out in paragraph 7 of Schedule 2.4 (<i>Security Management</i>);
"Change"	means each change to this Agreement or the Suppliers relevant operational procedures.
"Change Control Procedure"	means the procedure for changing this Agreement and commissioning Projects as set out in clause 12 (<i>Change Control Procedure</i>);
"Change in Law"	means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
"Change Request"	means a written request for a Change;
"Charges"	means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
"Claim"	has the meaning given in Paragraph 1.2 of Schedule 8.7 (Conduct of Claim)
"Class 1 Transaction"	has the meaning set out in the listing rules issued by the UK Listing Authority;
"CNI"	means Critical National Infrastructure;
"Commercial Sensitive Information"	<p>means the information listed in Schedule 4.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:-</p> <ul style="list-style-type: none">(a) the pricing of the Services;

OFFICIAL

- (b) the details of the Supplier's IPRs; and
- (c) the Supplier's business and investment plans

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.

"Commercial Systems Governance Board"

means the body described in paragraph 5 of Schedule 8.1 (*Governance*)

"Comparable Supply"

means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;

"Confidential Information"

means:-

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:-
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, knowhow and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:-

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a nonconfidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;

OFFICIAL

- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:-
 - (1) performance under this Agreement; or
 - (2) failure to pay any Subcontractor as required pursuant to Clause 14.5.1 (*Supply Chain Protection*);

"Contract Award Value" the monetary value of the contract awarded for the Term (or Extended Term should the option to extend be invoked) as at the time of contract award. The value of the Term is **£3,300,000.00** or full extended terms **£6,600,000.00**

"Contracts and Spend Insight Engine" means government's online tool, developed on the Microsoft Power BI application to analyse contract and spend data across the public sector;

"Contact Data" means the Personal Data of each Party's Employees Processed by the other Party, under, or in connection with, this Agreement;

"Contract Breakage Costs" the amounts payable by the Supplier to its Key Subcontractors or other third parties (as applicable) for terminating all relevant Key Subcontracts or Third Party Contracts as a direct result of the early termination of this Agreement;

"Contract Year" means:-

- (a) a period of twelve (12) months commencing on the Effective Date; or
- (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date,

provided that the final Contract Year shall end on the expiry or termination of the Term;

"Control" means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Controller" has the meaning given in the Data Protection Legislation;

"Core Information Management System" means those information assets, ICT systems and/or Sites which will be used by the Supplier and/or its Subcontractors to Process Authority Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources), which the Authority has determined in accordance with paragraph 5 of Schedule 2.4 (*Security Management*) shall be subject to Accreditation;

"Corporate Change Event" means:-

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;

OFFICIAL

- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the net asset value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any twelve (12) month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

"Corporate Resolution Planning Information"

means, together, the:-

- (a) Group Structure Information and Resolution Commentary; and
- (b) UK Public Sector and CNI Contract Information;

"Costs"

means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier or, as applicable, a Key Sub-contractor in providing the Services:-

- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:-
 - (i) base salary paid to the Supplier Personnel
 - (ii) employer's national insurance contributions
 - (iii) car allowances
 - (iv) any other contractual employment benefits

OFFICIAL

- (v) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within paragraph (b) below) and
- (vi) reasonable recruitment costs, as agreed with the Authority
- (b) costs incurred in respect of those 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 Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier or relevant Key Sub-contractor) any cost actually incurred by the Supplier in respect of those 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 or relevant Key Sub-contractor in the delivery of the Services
- (d) Forecast Contingency Costs
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism

but excluding:-

- (f) Overhead
- (g) financing or similar costs
- (h) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise
- (i) taxation
- (j) fines and penalties and

non-cash items (including depreciation, amortisation, impairments and movements in provisions)

"COTS"

means Software (including open source software) and/or IPRs that:

- (a) the relevant supplier (which may include the Supplier) makes generally available commercially (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price and has a Non-trivial Customer Base; or
- (b) in respect of Software, is otherwise classified in Schedule 5 (*Software*) as COTS for the purposes of this Agreement, regardless of whether such Software satisfies paragraph (a);

"Credit Rating Threshold"

means the minimum failure score of 60 or equivalent for the Supplier of as reported by Dun and Bradstreet Limited (or equivalent financial risk company as may be updated from time to time);

"Critical National Infrastructure"	means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:- <ul style="list-style-type: none"> (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or (b) significant impact on national security, national defence, or the functioning of the UK;
"Critical Performance Failure"	means the Supplier accruing in aggregate twenty (20) or more Service Points (in terms of the number of points allocated) in any period of three (3) months.
"Critical Service Contract"	means the overall status of this Agreement as determined by the Authority and specified in paragraph 1.1 of Part 2 to Schedule 8.6 (<i>Service Continuity Plan</i>)
"Crown Copyright"	has the meaning given in the Copyright, Designs and Patents Act 1988;
"CRP Information"	means the Corporate Resolution Planning Information;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Data Handover Period"	means a period commencing on the date on which the this Agreement terminates or expires and ending on the later of (a) six (6) months following such termination or expiry date and (b) the date on which the Authority Data has been fully transferred to the Authority, the relevant Service Recipient or a Replacement Supplier;
"Data Protection Legislation"	means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction as updated and amended from time to time which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject, including the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the GDPR and any code of practice or guidance published by the Information Commissioner or other regulator and/or, the European Data Protection Board. From the Exit Day, all legislation, regulator guidance or otherwise shall be as enacted in the UK or provided by the Information Commissioner or UK Government in respect of the protection of personal data;
"Data Subject"	has the meaning given in the Data Protection Legislation;
"Data Subject Request"	means a request or notice from a Data Subject exercising his or her rights under the Data Protection Legislation in relation to the Authority Personal Data;
"Dedicated Supplier Personnel"	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services
"Deductions"	means all Service Credits or any other deduction which is paid or payable to the Authority under this Agreement;
"Default"	means any material breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or

OFFICIAL

breach of a fundamental term) or any other default, act, omission, negligence or statement:-

- (a) in the case of the Authority, of its employees, servants, agents; or
- (b) in the case of the Supplier, of its Subcontractors or any Supplier Personnel,

in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;

"Delay" means a delay in the Achievement of a Milestone by its Milestone Date.

"Dependent Parent Undertaking" means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;

"Development Charges" mean charges for Additional Development;

"Disaster" means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of twenty-four (24) hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;

"Disaster Recovery Plan" has the meaning given in paragraph 1.2.1(c) of Schedule 8.6 (*Service Continuity Plan*);

"Disaster Recovery Services" means the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;

"Disaster Recovery System" mean the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;

"Disclosing Party" has the meaning given in Clause 20.1 (*Confidentiality*);

"Disclosing Party Group" means:-

- (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
- (b) where the Disclosing Party is the Authority or a Service Recipient, the Authority, the Service Recipient and any Central Government Body with which the Authority, Service Recipient or the Supplier interacts in connection with this Agreement;

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

OFFICIAL

"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Documentation"	<p>means descriptions of the Services relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:-</p> <ul style="list-style-type: none">(a) is required to be supplied by the Supplier to the Authority under this Agreement;(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 Services;(c) is required by the Supplier in order to provide the Services; and/or(d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	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;
"DPA"	means the Data Protection Act 2018;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Authority or a Service Recipient prior to the Effective Date;
"Effective Date"	means 01 April 2023;
"EIRs"	means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
"Emergency Exit"	<p>any termination of this Agreement which is a:-</p> <ul style="list-style-type: none">(a) termination of the whole or part of this Agreement in accordance with Clause 29 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to six (6) months(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 29 (<i>Termination Rights</i>) or

OFFICIAL

- (c) wrongful termination or repudiation of this Agreement by either Party;

"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 related to employment 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 employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters 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;

"Employees"

means all staff, including directors, officers and employees, as well as the agents and workers of either Party together with the directors, officers and employees of such Party's sub-contractors or suppliers and further down any contractual chain;

"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 the estimated Charges payable by the Authority;

"End User"

means any person authorised by the Authority to use the IT Environment and/or the Services

"ERP"

means Enterprise Resource Planning system.

"European Standard"

means in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

"Exclusive Assets"

those Assets used by the Supplier or a subcontractor which are used exclusively in the provision of the Services;

"Exit Day"

shall have the meaning in the European Union (Withdrawal) Act 2018;

"Exit Information"

has the meaning given in paragraph 3.1 of Schedule 8.5 (*Exit Management*);

OFFICIAL

"Exit Management"	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
"Exit Manager"	the person appointed by each Party pursuant to paragraph 2.3 of Schedule 8.5 (<i>Exit Management</i>) for managing the Parties' respective obligations;
"Exit Plan"	means the plan produced and updated by the Supplier during the Term in accordance with paragraph 4 of Schedule 8.5 (<i>Exit Management</i>);
"Expedited Dispute Timetable"	means the reduced timetable for the resolution of Disputes set out in paragraph 3 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Expert"	in relation to a Dispute, a person appointed in accordance with paragraph 6.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>) to act as an expert in relation to that Dispute.
"Expert Determination"	determination by an Expert in accordance with paragraph 6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Extended Term"	means the Initial Term as extended by the First Extension Period;
"Extension Period"	means the First Extension Period and/or the Second Extension Period;
"Financial Distress Event"	means the occurrence of one or more of the events listed in Clause Error! Reference source not found. (<i>Financial Reporting and Assurance</i>);
"Financial Transparency Objectives"	has the meaning given in Paragraph 2 of Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"Find a Tender Service"	means the platform used to advertise high-value procurement notices. Find a Tender Service ("FTS") replaced the Official Journal of the European Union (OJEU) as the platform for advertising high-value notices on 1 st January 2020 following the UK's exit from the EU;
"First Extension Period"	means a period of twenty-four (24) months from the end of the Initial Term;
"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 any relevant Central Government Body in relation to such Act;
"Force Majeure Event"	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel, telecommunications or network failures or delays, computer failures involving hardware or software not within Supplier's possession or reasonable control and acts of vandalism (including malicious cyber-attack) provided that the party claiming relief has taken reasonable technical measures to anticipate such eventualities.
"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;

OFFICIAL

"Former Supplier"	means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any Sub-contractor of any such Sub-contractor)
"GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
General AntiAbuse Rule"	means:- (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"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 at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
"Government Commercial Operating Standards" ("GCOS")	means the Government Functional Standard - GovS 008: Commercial, as may be amended from time to time. The purpose of these standards is to set expectations and drive consistency in the planning, management and execution of commercial activities, ensuring contracts and relationships with suppliers realise value for money and result in delivery of high-quality public services. Further information is available at: https://www.gov.uk/government/publications/commercial-operating-standards-for-government .
"Group Structure Information and Resolution Commentary"	means the information relating to the Supplier Group to be provided by the Supplier in accordance with paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (<i>Service Continuity Plan</i>);
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Health and Safety Policy"	means the health and safety policy of the Authority, Service Recipients and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
"Help Desk"	means the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
"HMRC"	means HM Revenue & Customs;
"Implementation Plan"	means the Outline Implementation Plan or (if and when approved by the Authority pursuant to paragraph 3 of Schedule 6.1 (<i>Implementation Plan</i>)) the

OFFICIAL

Detailed Implementation Plan as updated in accordance with paragraph 4 of Schedule 6.1 (*Implementation Plan*) from time to time;

"Implementation Services"	means the implementation services specified in the Services Description to ensure the Operational Services are ready to be provided with effect from the Operational Service Commencement Date;
"Implementation Services Commencement Date"	means the date on which the Supplier is to commence provision of the Implementation Services, being the date specified in the Implementation Plan;
"Indemnified Person"	means the Authority, each Service Recipient;
"Indemnifier"	has the meaning given in paragraph 1.1 of Schedule 8.7 (<i>Conduct of Claim</i>);
"Indexation" and "Index"	means the adjustment of an amount or sum in accordance with paragraph 10 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
"Information"	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CDROM, magnetic and digital form);
"Information Commissioner"	means the UK Information Commissioner (including any successor or replacement);
"Information Management System"	means the Core Information Management System and the Wider Information Management System;
"Initial Term"	means the period of forty eight (48) months from and including the Implementation Services Commencement Date;
"Insolvency Continuity Plan"	as the meaning given in paragraph 1.2.1(d) of Schedule 8.6 (<i>Service Continuity Plan</i>);
"Insolvency Event"	means with respect to any person, means:- <ul style="list-style-type: none">(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:-<ul style="list-style-type: none">(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that that person with one or more other companies or the solvent reconstruction of that person;

OFFICIAL

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:-
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

"Intellectual Property Rights" or "IPRs" means:-

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, knowhow, trade secrets and other rights in Confidential Information;
- (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
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

OFFICIAL

"IPRs Claim"	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs in respect of: <ul style="list-style-type: none">(a) rights granted to the Indemnified Persons under this Agreement;(b) the Supplier's performance of the Services; and/or(c) the use by the Authority and Service Recipients of the Services;
"IT"	means information and communications technology;
"IT Environment"	means the Authority System and the Supplier System;
"JCT contracts"	means the range of building contracts to suit all projects and procurement options produced by The Joint Contracts Tribunal Limited;
"Joint Implementation Board"	means the body described in paragraph 3 of Schedule 8.1 (<i>Governance</i>);
"IT Health Check"	has the meaning given paragraph 7.1.1 of Schedule 2.4 (<i>Security Management</i>);
"Key Performance Indicator"	means the key performance indicators set out in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 (<i>Performance Levels</i>);
"KPI Service Threshold"	has the meaning set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 (<i>Performance Levels</i>);
"Law"	means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Logged Issue"	means a problem or requirement notified to the Help Desk and logged on the Help Desk system with a reference number
"Losses" or "Loss"	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's or relevant Sub-contractor's offices, or to and from the Sites) but excluding lunch breaks.

OFFICIAL

"Management Information"	means the management information specified in Schedule 2.2 (<i>Performance Levels</i>) Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority;
"Material KPI Failure"	means:- (a) a Serious KPI Failure; (b) a failure by the Supplier to meet a KPI Service Threshold;
"Measurement Period"	means in relation to a Key Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually);
"Mediation Notice"	has the meaning given in paragraph 4.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Mediator"	the independent third party appointed in accordance with paragraph 5.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>) to mediate a Dispute.
"Milestone Date"	means the target date set out against the relevant Milestone in the Implementation Plan or (with respect to an Additional Milestone) as agreed between the Parties under the Change Control Procedure by which the Milestone must be Achieved;
"Minor KPI Failure"	means shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 (<i>Performance Levels</i>);
"month"	means a calendar month and "monthly" shall be interpreted accordingly;
"Multi-Party Dispute"	a Dispute which involves the Parties and one or more Related Third Parties.
"Multi-Party Dispute Resolution Procedure"	has the meaning given in paragraph 9.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Multi-Party Dispute Representatives"	has the meaning given in paragraph 9.6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Multi-Party Dispute Resolution Board"	has the meaning given in paragraph 9.6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Multi-Party Procedure Initiation Notice"	has the meaning given in paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"NEC"	means the range of contracts designed to manage projects from start to finish produced by the Institute of Civil Engineers;
"Net Book Value"	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
"Non-Available"	means in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available
"Non-Exclusive Assets"	those Assets (if any) which are used by the Supplier or a subcontractor in connection with the provision of the Services but which are also used by the Supplier or subcontractor for other purposes of material value;

OFFICIAL

"Non-trivial Customer Base"	means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
"Notifiable Default"	shall have the meaning given in Clause Error! Reference source not found. (<i>Rectification Plan Process</i>);
"Occasion of Tax Non-Compliance"	<p>means:-</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:-</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(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 Effective Date or to a civil penalty for fraud or evasion;</p>
"Open Source"	means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
"Operating Environment"	means the environment in which the Services will be used by the Authority and the Service Recipients including the Authority System and the Sites;
"Operational Service Commencement Date"	means in relation to an Operational Service the date identified in the Implementation Plan upon which the Operational Services are to commence;
"Operational Services"	means the operational services described as such in the Services Description;
"Optional Services"	means the provision of the Optional Services listed in Appendix 2 of Schedule 7.1 (<i>Charges and Invoicing</i>).
"Ordinary Exit"	<p>Means any termination of the whole or part of this Agreement which occurs pursuant to Clause 33 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to six (6) months; or</p> <p>as a result of the expiry of the Initial Term or any Extension Period;</p>
"Other Supplier"	means any supplier to the Authority, the Service Recipients and/or the Department of Business, Energy and Industrial Strategy or its successor body (other than the Supplier), including any supplier relevant to the delivery of Project Victory, which is notified to the Supplier by the Authority from time to time;

OFFICIAL

"Outline Implementation Plan"	means the outline plan set out at Appendix 1 of Schedule 6.1 (<i>Implementation Plan</i>);
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within paragraph (a) of the definition of "Costs" or the day cost set out in Table 11 of Appendix 3 of Schedule 7.1 (<i>Charges and Invoicing</i>);
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Parties" and "Party"	have the meanings respectively given on page 1 of this Agreement
"Performance Monitoring Report"	has the meaning given in paragraph 1.1.1 of Part 2 of Schedule 2.2 (<i>Performance Levels</i>);
"Performance Review Meeting"	means the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in paragraph 1.3 of Part 2 of Schedule 2.2 (<i>Performance Levels</i>);
"Permitted Maintenance"	shall have the meaning in paragraph 4 of part 1 of Schedule 2.2 (<i>Performance Levels</i>).
"Personal Data"	has the meaning given in the Data Protection Legislation and for the purposes of this Agreement includes special categories of Personal Data as set out in Article 9 of the GDPR and personal data relating to criminal convictions and offences as described in Article 10 of the GDPR;
"Personal Data Breach"	has the meaning given in the Data Protection Legislation;
"Personal Data Processing Statement"	sets out: <ul style="list-style-type: none">(i) the types of Personal Data which the Supplier and/or its Subcontractors are Processing on behalf of the Authority;(ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Subcontractors are Processing on behalf of the Authority; the nature and purpose of such Processing;(iii) the locations at which the Supplier and/or its Sub-contractors Process Authority Data; and,(iv) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect the Authority Data against a Security Breach including a Personal Data Breach, which shall be prepared by the Supplier in accordance with paragraph 5.4 of Schedule 2.4 (<i>Security Management</i>) and included in the Risk Management Documentation;
"Process", "Processed" or "Processing"	have the meaning given in the Data Protection Legislation;
"Process Authority Data"	means any operation which is performed on Authority Data, whether or not by automated means, including adapting, altering, collecting, combining,

OFFICIAL

copying, destroying, erasing, handling, organising, publishing retrieving, storing, structuring, transmitting or otherwise using Authority Data;

"Processor"

has the meaning given in the Data Protection Legislation;

"Product Roadmap"

means the roadmap for the Licensed Software that the Supplier (or its licensors) maintains from time to time that shall include:-

- (a) details of the new or revised functionality of the Licensed Software taking into account the version of the Licensed Software that is available in the market from time to time;
- (b) mapping against relevant industry standards;
- (c) the key characteristics and benefits of the Licensed Software;
- (d) the Licensed Software's ability to interoperate with the Authority's interfacing systems including the software of the Other Suppliers; and
- (e) any modifications that might be required to existing Vehicle design and installations;

"Prohibited Act"

means:-

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or a Service Recipient a financial or other advantage to:-
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (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;
- (c) an offence:-
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority or a Service Recipient; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Project"

means a one-time activity to be supplied by the Supplier that has been commissioned under the Change Control Procedure;

OFFICIAL

"Project Charges"	means the Charges for delivery of a Project as set out in the relevant Change Authorisation Notice based on the charging principles for Projects set out in Schedule 7.1 (<i>Charges and Invoicing</i>);
"Project Managers"	means the individuals appointed as such by the Authority and the Supplier in accordance with paragraph 1 of Schedule 8.1 (<i>Governance</i>);
"Project Victory"	means the programme of procurements that the Authority initiated pursuant to the FTS notice referred to in Recital (B);
"Public Sector Dependent Supplier"	means a supplier where that Supplier, or that Supplier's Group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
"Public Sector and CNI Contract Information"	means the information requirements set out in accordance with Appendix 2 of Part 2 of Schedule 8.6 (<i>Service Continuity Plan</i>);
"Quarter"	means the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
"Recipient"	has the meaning given in Clause 20.1 (<i>Confidentiality</i>);
"Records"	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
"Register"	Means the register and configuration database referred to in paragraphs 2.1.1 and 2.1.2 of Schedule 8.5 (<i>Exit Management</i>);
"Regulator Correspondence"	means any correspondence from the Information Commissioner or other applicable regulator in relation to the Processing of Personal Data;
"Reimbursable Expenses"	<p>means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the provision of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:-</p> <ul style="list-style-type: none">a. travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing andb. subsistence expenses incurred by Supplier Personnel whilst providing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed.
"Related Third Party"	<p>means a party to:-</p> <ul style="list-style-type: none">a. another contract with the Authority or the Supplier which is relevant to this Agreement orb. a Subcontract.
"Relevant Authority"	means the Authority or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
"Relevant IPRs"	means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the

OFFICIAL

Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the Licensed Software;

"Relevant Requirements"	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;
"Relevant Tax Authority"	means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place
"Relief Notice"	has the meaning given in Clause 27.2 (<i>Authority Cause</i>);
"Repeat KPI Failure"	has the meaning given in paragraph 3.1 of Part 1 of Schedule 2 (<i>Performance Levels</i>);
"Replacement Services"	means any services which are the same as or substantially similar to any of the Services and which the Authority or a Service Recipient receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority or a Service Recipient internally and/or by any third party;
"Replacement Supplier"	means any third party service provider of Replacement Services appointed by the Authority or a Service Recipient from time to time (or where the Authority or Service Recipient is providing replacement Services for its own account, the Authority or Service Recipient);
"Replacement sub-contractor"	means a Sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-contractor of any such Sub-contractor)
"Request for Estimate"	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment that would be payable if the Authority exercised its right under Clause 31.1.1 (<i>Termination by the Authority</i>) to terminate this Agreement for convenience on a specified Termination Date;
"Request For Information"	means a Request for Information under the FOIA or the EIRs;
"Required Changes Register"	is a register which forms part of the Risk Management Documentation which records each of the changes that the Supplier has agreed with the Authority shall be made to the Core Information System and/or the Risk Management Documentation as a consequence of the occurrence of any of the events set out in paragraph 5.13.1 to 5.13.8 of Schedule 2.4 (<i>Security Management</i>) together with the date on which each such change shall be implemented and the date on which each such change was implemented;
"Review Report"	has the meaning given in paragraphs 6.2.1 to 6.2.3 of Schedule 8.6 (<i>Service Continuity Plan</i>);
"Risk Management Approval Statement"	is a notice issued by the Authority which sets out the information risks associated with using the Core Information Management System and confirms that the Authority is satisfied that the identified risks have

OFFICIAL

been adequately and appropriately addressed and that the residual risks are understood and accepted by the Authority;

"Risk Management Documentation"	has the meaning given in paragraph 5.3 of Schedule 2.4 (<i>Security Management</i>);
"Risk Management Reject Notice"	as the meaning given in paragraph 5.7.2 of Schedule 2.4 (<i>Security Management</i>);
"Satisfaction Survey"	has the meaning given in paragraph 7.1 of Part 2 of Appendix 1 of Schedule 2.2. (<i>Performance Levels</i>);
"Second Extension Period"	means a period of twenty-four (24) months from the end of the First Extension Period;
"Security Test"	has the meaning given in paragraph 7.1 of Schedule 2.4 (<i>Security Management</i>);
"Sensitive Claim"	has the meaning given in paragraph 2.1 of Schedule 8.7 (<i>Conduct of Claim</i>);
"Serious KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Appendix 1 of Schedule 2.2 (<i>Performance Levels</i>);
"Service Availability"	has the meaning given in paragraph 2 of Part 2 of Appendix 1 of Schedule 2.2 (<i>Performance Levels</i>);
"Service Charges"	means the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;
"Service Continuity Plan"	means, as at the Effective Date, the plan attached at Appendix 1 of Schedule 8.6 (<i>Service Continuity Plan</i>) and as updated pursuant to paragraph 6 of that Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;
"Service Continuity Services"	means the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (<i>Service Continuity Plan</i>);
"Service Credits"	means credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with paragraph 8 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
"Service Downtime"	means any period of time during which any of the Services are not Available
"Service Incident"	means a reported occurrence of a failure to deliver any part of the Services in accordance with the Authority Requirements or the Key Performance Indicators
"Service Period"	means a calendar month, save that:- <ul style="list-style-type: none">(a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and(b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term

"Service Points"

means in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the Service Points column of Table in Appendix 1 of Schedule 2.2 (*Performance Levels*);

"Service Recipient"

means each of:

- (a) Sellafield Limited a company registered in England and Wales (company number 01002607) with its registered office at Hinton House Birchwood Park Avenue, Risley, Warrington, Cheshire, United Kingdom, WA3 6GR;
- (b) Low Level Waste Repository Ltd a company registered in England and Wales (company number 05608448) with its registered office at Old Shore Road, Drigg, Holmrook, Cumbria, CA19 1XH;
- (c) Magnox Limited a company registered in England and Wales (company number 02264251) with its registered office at Oldbury Technical Centre, Oldbury Naite, Thornbury, South Gloucestershire, England, BS35 1RQ;
- (d) Dounreay Site Restoration Limited a company registered in Scotland (company number SC307493) with its registered office at Building D2003, Dounreay, Thurso, Caithness, KW14 7TZ;
- (e) International Nuclear Services Limited a company registered in England and Wales (company number 01144352) with its registered office at Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
- (f) Direct Rail Services Limited a company registered in England and Wales (company number 03020822) with its registered office at Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
- (g) Radioactive Waste Management Limited a company registered in England and Wales (company number 08920190) with its registered office at Building 329 West Thomson Avenue, Harwell Oxford, Didcot, England, OX11 0GD;
- (h) Rutherford Indemnity Limited a company registered in Guernsey and regulated by the Guernsey Financial Services Commission;
- (i) Nuclear Decommissioning Authority with its office at Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
- (j) National Nuclear Laboratory Limited a company registered in England and Wales (company number 03857752) with its registered office at Chadwick House Warrington Road, Birchwood Park, Warrington, WA3 6AE;
- (k) any other public body that the parties agree in writing should be considered a Service Recipient,

and any successor bodies thereto that perform any of the functions previously performed by any of the foregoing bodies who must be a party to a contract in CEMAR for which the Services are provided;

"Service Transfer"

means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

"Service Transfer Date"

means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

OFFICIAL

"Services"	means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>);
"Services Description"	means the services description set out in Schedule 2.1 (<i>Services Description</i>);
"Sites"	<p>means any premises (including the Authority Premises, the Supplier's premises or third party premises):-</p> <p>(a) from, to or at which:-</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:-</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
"SME" or "Small and Medium-sized Enterprises"	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
"Software"	means Supplier Software and Third Party Software;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Staffing Information"	<p>means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <p>a. their ages, dates of commencement of employment or engagement, gender and place of work</p> <p>b. details of whether they are employed, self employed contractors or consultants, agency workers or otherwise</p> <p>c. the identity of the employer or relevant contracting Party</p> <p>d. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments</p> <p>e. their wages, salaries, bonuses and profit sharing arrangements as applicable</p> <p>f. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them</p> <p>g. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims)</p>

OFFICIAL

- h. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence
- i. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees) and
- j. any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Standard Contractual Clauses"

means the Standard Contractual Clauses (*Controller to Processor*) issued by the European Commission as updated and/or amended from time to time or such equivalent document published by the UK Government following the Exit Day;

"Standards"

the standards, policies and/or procedures identified in Schedule 2.3 (*Standards*);

"Standards Hub"

means the Government's open and transparent standards adoption process as documented at <http://standards.data.gov.uk/>

"Statement of Information Risk Appetite"

has the meaning given paragraph 4.1 of Schedule 2.4 (*Security Management*);

"Strategic Supplier"

means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

"Subcontract"

means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

"Subcontractor"

means any third party (including a sub-processor of Authority Personal Data) with whom:-

- (a) the Supplier enters into a Subcontract; or
- (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;

"Subsidiary Undertaking"

has the meaning set out in section 1162 of the Companies Act 2006;

"Successor Body"

has the meaning given in Clause 32.4 (*Assignment and Novation*);

"Suggested Challenge"

means a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub

"Supplier Change Manager"

means the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative;

"Supplier COTS IPRs"

means any embodiments of Supplier IPRs that are COTS;

OFFICIAL

"Supplier COTS Software"	means Supplier Software (including open source software) that is COTS;
"Supplier Forum"	means the body described in paragraph 5 of Schedule 8.1 (<i>Governance</i>);
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier IPRs"	<p>means:-</p> <p>(a) Intellectual Property Rights owned by the Supplier (or an Affiliate of the Supplier) before or after the Effective Date, for example those subsisting in the Supplier's or Affiliate's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's or Affiliate's know-how or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier (or an Affiliate of the Supplier) independently of this Agreement,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier (or Affiliate of the Supplier) subsisting in the Supplier Software;</p>
"Supplier NonPerformance"	has the meaning given in Clause 27.1 (<i>Authority Cause</i>);
"Supplier Personnel"	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 Agreement;
"Supplier Representative"	means the representative appointed by the Supplier pursuant to Clause 10.2 (<i>Representatives</i>), as notified to the Authority from time to time;
"Supplier Request"	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.
"Supplier Software"	means software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);
"Supplier Solution"	means the Supplier's solution for the Services set out in Schedule 4.1 (<i>Supplier Solution</i>) including any Appendices of that Schedule;
"Supplier System"	means the information and communications technology system used by the Supplier in implementing and performing the Services, the Supplier equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
"Supplier Termination Event"	<p>means:-</p> <p>(a) the Supplier's level of performance constituting a Critical Performance Failure;</p> <p>(b) the Supplier committing a material Default which is irremediable</p>

OFFICIAL

- (c) the Supplier committing a material Default which is remediable but has not been remedied within thirty (30) days from the Authority or Service Recipient notifying the Supplier of the Default;
- (d) where a right of termination is expressly reserved in this Agreement, including pursuant to:-
 - (i) Clause 18 (*IPRs Indemnity*);
 - (ii) Clause 35.6.2 (*Prevention of Fraud and Bribery*); and/or
 - (iii) Clause **Error! Reference source not found.** (*Financial Reporting and Assurance*);
- (e) the representation and warranty given by the Supplier pursuant to Clause 3.2.7 (*Warranties*) being materially untrue or misleading;
- (f) the Supplier committing a material Default under Clause 9.12 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 9.12 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (g) the Supplier committing a material Default under any of the following Clauses:-
 - (i) Clause 20 (*Confidentiality*); and
 - (ii) Clause 21 (*Transparency and Freedom of Information*);
 - (iii) Clause 22 (*Protection of Personal Data*); and
 - (iv) Clause 31 (*Compliance*); and/or

in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or

in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
- (h) an Insolvency Event occurring in respect of the Supplier
 - (i) the
 - (i) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
 - (j) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

"Supplier's Final Supplier Personnel List"

means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date

"Supplier's Provisional Supplier Personnel List"

means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is

OFFICIAL

envisaged as at the date of such list will no longer be provided by the Supplier

"Supplier's Proposals"	has the meaning given to it in paragraph 6.2.3 of Schedule 8.6 (<i>Service Continuity Plan</i>);
"Supporting Documentation"	means sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts.
"System Response Time"	has the meaning given in paragraph 3.1 of Part 2 of Appendix of Schedule 2.2. (<i>Performance Levels</i>);
"Target Performance Level"	means the minimum level of performance for a Key Performance Indicator which is required by the Authority, as set out against the relevant Key Performance Indicator in the tables in Appendix 1 of Schedule 2.2 (<i>Performance Levels</i>);
"Tender Documents"	means the advertisement issued by the Authority seeking expressions of interest, the selection questionnaire, Invitation to Submit Initial Tender;
"Term"	means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
"Termination Date"	means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
"Termination Estimate"	has the meaning given in paragraph 10.2 of Schedule 7.2 (<i>Payments on Termination</i>);
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
"Termination Payment"	has the meaning given in paragraph 2 of Schedule 7.2 (<i>Payments on Termination</i>);
"Tests" and "Testing"	means any tests required to be carried out under this Agreement; and "Tested" shall be construed accordingly;
"Third Party Beneficiary"	has the meaning given in Clause 39.1 (<i>Third Party Rights</i>);
"Third Party Contract"	means a contract with a third party entered into by the Supplier exclusively for the purpose of providing the Services, as listed in Schedule 4.2 (<i>Third Party Contracts</i>);
"Third Party IPRs"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Provisions"	has the meaning given in Clause 39.1 (<i>Third Party Rights</i>);
"Third Party Software"	means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);

OFFICIAL

"Time Service Charges"	means the charges relating to the Rate Card of Appendix 3 of Schedule 7.1 (<i>Charges and Invoicing</i>);
"Transferable Assets"	those of the Exclusive Assets which are capable of legal transfer to the Authority;
"Transferable Contracts"	means the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority, any Service Recipient or any Replacement Supplier to provide the Services or the Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given in paragraph 5.2,1 of Schedule 8.5 (<i>Exit Management</i>);
"Transferring Contracts"	has the meaning given in paragraph 5.2.1(c) of Schedule 8.5 (<i>Exit Management</i>)
"Transferring Supplier Employees"	means those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date;
"UK"	means the United Kingdom;
"UK Public Sector Business"	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
"Unplanned System Downtime"	means any period of time during which any of the Services are not available, excluding Permitted Maintenance time;
"Unrecovered Costs"	means the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) as such Costs and Charges are forecast in the Financial Model;
"Unrecovered Payment"	means an amount equal to the lower of:- <ul style="list-style-type: none">a. the sum of the Unrecovered Costs andb. the amount specified in paragraph 4.3 of Schedule 7.2 (<i>Payments on Termination</i>);
"VAT"	means value added tax as provided for in the Value Added Tax Act 1994; and
"Vulnerability Correction Plan"	has the meaning given in paragraph 7.3.3(a) of Schedule 2.4 (<i>Security Management</i>);
"Wider Information Management System"	means those information assets, ICT systems and/or Sites which will be used by the Supplier and/or its Subcontractors to Process Authority Data which have not been determined by the Authority to form part of the Core Information Management System together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources;

OFFICIAL

"Working Day"

means any day other than a Saturday, Sunday or public holiday in England and Wales.

OFFICIAL

SCHEDULE 2.1

SERVICES DESCRIPTION

Issue No:	Summary of Change:
V0.1	Version for issue with ITT.

I. DEFINITIONS

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

44. INTRODUCTION – BACKGROUND INFORMATION ONLY

- 44.1 As the Authority and its organisations, the Service Recipients, have come together over recent years, our individual organisations have each brought their own local commercial processes and systems. The Authority is bringing these into alignment with the [Government Commercial Operating Standards](#) (GCOS). "Project Victory" is been tasked with delivery of a suite of commercial systems which:

- 44.1.1 Work well for all Service Recipients, and align with GCOS requirements;
- 44.1.2 Facilitate more strategic procurement activities such as commercial and financial modelling, effective category management, market and supplier analysis and management, and, optionally, supplier relationship management;
- 44.1.3 Shift the NDA and its subsidiaries from manual data collection, manipulation and reporting to automated solutions;
- 44.1.4 Improve data integrity, and compliance with data standards;
- 44.1.5 Improve the ability to share and obtain information from/with other systems, particularly Enterprise Resource Planning (ERP) systems;
- 44.1.6 Enhance the ability to share information across the Service Recipients, and also into and out of central government;
- 44.1.7 Dovetail with central government systems, such as the Contracts and Spend Insight Engine (CaSIE), without the need for 'double keying' or manual intervention to upload data; and
- 44.1.8 Enable baselining and measurement of government targets for supply chain spend, such as through small and medium-sized enterprises (SMEs).

45. OPERATIONAL SERVICES

- 45.1 In addition to Schedule 4.1 (*Supplier Solution*), the Supplier shall provide the following Operational Services:-
- 45.1.1 The provision and maintenance of operational software and interfaces which meet the functional requirements for the System set out Volume 4 of the ITT; the Interfaces Overview Document; and the Data Dictionary as included in Volume 6 of the ITT, as detailed in Appendix 1;
 - 45.1.2 The provision of supported data migration to import legacy supplier and contract data to the system, in accordance with Schedule 6.1 (*Implementation Plan*);
 - 45.1.3 The provision of training and training materials in accordance with Schedule 6.1 (*Implementation Plan*);
 - 45.1.4 The provision of a help desk service between the hours of 0830 and 1730 in accordance with the performance levels set out in Schedule 2.2 (*Performance Levels*);
 - 45.1.5 The provision of an escalation route for unresolved issues (e.g. a Supplier Account Manager), or for issues raised out-of-hours in a critical situation;
 - 45.1.6 The provision of performance reporting in accordance with the requirements of Schedule 2.2 (*Performance Levels*);

46. **SUPPLIER SYSTEM DESCRIPTION**

- 46.1 In addition to Schedule 4.1 (*Supplier Solution*), the Supplier System and interfaces shall cover the following scope in accordance with the Government Commercial Operating Standards as may be updated from time to time:-
- 46.2 “Planning”, including Commercial Pipeline and Project Management to:-
- 46.2.1 deliver project gate and other approval workflows;
 - 46.2.2 record and monitor the delivery of project benefits, cashable and non-cashable;
- 46.3 “Source”, including Publication, Selection and Evaluation, Contract Award and Implementation to:-
- 46.3.1 support publication of contract notices;
 - 46.3.2 enable framework call offs, variations, extensions and other such procurement activities that might be required during the management of a contract, in accordance with the Public Contracts Regulations 2015, any subsequent UK procurement legislation thereafter;
 - 46.3.3 enable framework call offs, variations, extension and other such procurement activities that might be required during the management of a contract below the regulatory thresholds; and
 - 46.3.4 support contract registry and document storage.
- 46.4 “Manage”, including Contract Management and Supplier Performance Management to:-
- 46.4.1 facilitate effective contract management; and
 - 46.4.2 record and report on contract and supplier performance.
- 46.5 “Systems and Information”, including Source to Contract master data management to:-
- 46.5.1 provide a controlled supplier master database with standardised data across the system landscape, including functionality for suppliers to update their own data with workflow approval; and
 - 46.5.2 provide effective user management and controls, and security controls
- 46.6 “Reports and Interfaces” to:-
- 46.6.1 provide a suite of internal reports for the above areas of functionality, and dashboards to bring together data across the system to support performance monitoring; and
 - 46.6.2 provide and maintain the interfaces as defined in Volume 3 of the ITT between the Supplier System and systems provided by Third Party Suppliers as determined by the Authority, as set out in Appendix 1.

APPENDIX 1
DETAILED REQUIREMENTS

VOLUME 4

PART 1: TECHNICAL REQUIREMENTS

This set of Technical Requirements tests the Bidder's understanding of, and approach to, meeting the stated requirements of the NDA as given in this Volume 4 (Technical, Financial, Commercial and Legal Requirements and Bidder Questionnaire). The Bidder is requested to provide a suitable response to the Set Question for each of the Operational Requirements below as appropriate, and to take into account the overarching requirement of the NDA to implement best practice and innovation in both technology and associated processes.

For the purpose of Volume 4, the terms "Supplier" and "Contractor" shall have the following meanings:

- "Supplier" means the Bidder who, if successful, will become the supplier of the system.
- "Contractor" means those organisations providing supplies, services and works to the NDA group who will be using the system.

Set Questions

For each of the stated Technical Requirements, please describe how you would deliver each of the associated requirements below, giving reference to the following indicators in your responses:

- A. Describe how you would propose to deliver to meet the specific requirement, including the associated metrics you will use to monitor, assess and evidence progress towards delivery.
- B. Provide examples of how you would adhere to any applicable best practice or standards and describe any qualitative and quantitative benefits of such approach.

OFFICIAL

- C. Evidence that you have the appropriately skilled resource to both deliver the requirement and support the NDA during transition to the new Managed Services.
- D. State if the feature is available or how you mean to meet it.

Ref:	General System Requirements/User experience/Master Data Management
A1	Describe how the core system configuration meets the criteria below:
A1.01	The system is able to operate effectively with a standard broadband connection (8MB down, 2MB up). The system will be built on an industry-recognised robust coding platform.
A1.02	<p>Data is maintained at high quality and data entry is eased by:</p> <ul style="list-style-type: none"> - Standard formatting across the system, including UK style for dates, currency etc. - Use of drop-down/check-boxes/radio buttons to limit free text entry wherever possible - Fields can be marked as mandatory or optional for entry by system administrators - Free-text fields have character limits stated
A1.03	The system supports Azure single-sign-on across all modules/functional areas. There are several separate instances of Azure across the group. The system also supports two-factor security for logins which are not from trusted networks.
A1.04	The system can operate with security monitoring via Azure Sentinel.

OFFICIAL

A1.05	Users can carry out self-service password reset via their official email address. Lost usernames would require helpdesk support and confirmation (see A2.01 below).
A1.06	User password structure follows UK National Cyber Security Centre guidance.
A1.07	The system can store documents and media in a range of common office formats.
A1.08	The system supports flexibility by offering customisable fields for use across the system.
A1.09	The system can be used whilst mobile, from a tablet or, in a limited way, from a smartphone. This will support the efficient update of contract comms and status, with electronic site diaries.
A1.10	The system supports rich text, including copy/paste operations, so that bold/italic/bullet points etc can be used.
A1.11	Screens / Events should be viewable simultaneously in a windows type of set up to allow easy comparison and copying and pasting. It is also desirable that events can be viewed (as read-only) even when open by another user.
	Bidder response: (Word limit 2500):

A2	Describe how the system is supported, maintained and developed, to meet the criteria below:
A2.01	Helpdesk support is to be provided by the Supplier with cover from 0800 – 1700 Monday to Friday as a minimum. This will offer two key services: <ul style="list-style-type: none"> - Second-line support for issues escalated by super-users or local administrators across the NDA group. Super-users may identify issues as urgent for faster response.

OFFICIAL

	<ul style="list-style-type: none"> - First-line support to contractors having difficulty with using the system (referring issues related to individual projects to super-users or local administrators). <p>Helpdesk will provide access via email or system messaging as a preference, or by phone. An escalation route is provided to enable urgent out-of-hours matters to be resolved.</p> <p>In the event of system downtime/service degradation, email notification to designated internal system administrators will be administered and distributed by the Supplier as per the agreed Service Level Agreements and Service Credits policy.</p> <p>The helpdesk will seek customer satisfaction feedback for reporting on performance.</p>
A2.02	A staging/sandpit environment will be provided to support testing of system changes/upgrades as well as user familiarisation, identical in functionality to the live system and with representative test data, at no extra cost. This will include the provision of the contractors' view of the system.
A2.03	The Supplier maintains and communicates to NDA a forward view of system developments and releases, with developments to existing functionality being free of charge and clarity provided about the cost of further enhancements/upgrades. The system is expected to remain under Supplier support throughout the life of the contract.
A2.04	Maintenance patches and upgrades must come with full user documentation.
A2.05	The system provides users with both general and context-sensitive help information and guidance notes to support both initial familiarisation and to lead users through a process journey. Video material, or similar, is available to guide users, including contractors.
A2.06	The Supplier will provide training on the system to all users prior to system go live, and monthly thereafter. The Supplier should provide for remote delivery of this training due to the wide geographical distribution of NDA sites and users.
A2.07	The Supplier will provide a solution for the periodic back-up of data to prevent data loss. This will include the freezing and back-up of data prior to the implementation any of updates/improvements/changes identified as Major jointly by NDA and the Supplier.
A2.08	Configurable email alerts are automatically generated to users based on events configured within the project workflows and at specified stages. The content of such emails can be configured by end-users to meet their own preferences, with some alerts being mandatory.

OFFICIAL

A2.09	<p>The system supports secure, auditable communications between the user and contractors for the life of the contract. Such communications are retained in line with the organisations' records management policies even if the user is removed from the system. Replacement staff can be given access to existing communications for a contractor/contract.</p> <p>Super users should be able to bulk download all the contract communications at any point during or after the contract.</p> <p>The contractor should also have a facility to bulk download all the communications they have been sent during the contract.</p>
	<p>Bidder response: (Word limit 2000):</p>

A3	Describe how the system is locally administered, to meet the criteria below:
A3.01	<p>Designated internal system administrators have access to add new users to the system (including contractor users).</p> <p>Designated internal system administrators have access to allocate users to contracts as well as allocating the user's role per contract. It is desirable that they can bulk upload new and existing users onto multiple contracts.</p>
A3.02	<p>User access to the system is controlled via a role-based or user group profile mechanism so that the access of all users in a role or group can be maintained and modified as requirements develop.</p> <p>Access to view, amend and approve information can be controlled by module, NDA subsidiary, department, programme, Site, project or contract and should include roles such as Administrator and Standard user and be in line with delegations. Different levels of Administrator are also desirable where only the highest level can amend financial thresholds. Designated internal system administrators can assign users to roles/profiles and customise individual access.</p>
A3.03	<p>The system must support the standard roles required for the effective operation of the NEC contract families, as well as flexibly configured roles to support the management of other contracts on the system.</p>

OFFICIAL

	It is also desirable that some key internal people can be flagged / filtered as such for accountability purposes e.g. the Quantity Surveyor on a contract.
A3.04	The internal system administrators can audit every transaction conducted by any user, and report on activity on a user-by-user basis.
A3.05	The internal system administrators can create, modify and delete templates and process workflows as required so that a tailored set of templates is available.
A3.06	The system has designated mandatory fields or check questions / prompts during contract set-up and events to ensure accurate input.
A3.07	The system supports flexibility by offering many customisable fields in contract set-up in order to facilitate the filtering of data for reporting. The fields should include contract type and contract option.
A3.08	The system provides a 'noticeboard' facility to alert all users to, for example, maintenance times or practice reminders etc set by internal administrators.
A3.09	The system supports bulk export and import of data independently of the Supplier, administered through a visually accessible and clean-designed interface. This should include the bulk upload of multiple documents relating to a contract (rather than loading them one at a time).
A3.10	The system supports the flexible management of reminders such as general communications and allows for reminders to be deleted in bulk by the user when no response is required. Communications should be able to be flagged as 'no reply required', to avoid the build-up of unresolved communications.
A3.11	<p>To provide analysis by category, the system supports the simplified version of the United Nations Standard Products and Service Codes (UNSPSC) used in the NDA group, Standard Industrial Classification codes (SIC), and Common Procurement Vocabulary codes (CPV), along with any other business specific codes that might be used.</p> <p>Contracts should be able to be assigned to the appropriate code values for analysis. The system should be capable of multiple codes being assigned.</p>
A3.12	The system supports contractors to manage their own master data profile through designated users who have been assigned the appropriate access. (Changes will be synchronised via interface with the Atamis Tendering and Contract Management system).
A3.13	The system enables a lead user within the contractor organisation to configure their internal team roles.

OFFICIAL

A3.14	The data dictionary attached sets out the core fields and NDA-specific fields which must be supported for operation and interfacing, alongside a much broader range of data provided by the solution as standard.
A3.15	Administrators can change the visible labels for fields on the system to align with NDA group usage.
A3.16	The system supports the migration of existing data from legacy systems on mobilisation, including contractors, projects and contracts.
	Bidder response: (Word limit 3500):

B	The End-to-End Project Management of Contracts
B1	Describe how the system supports the setting up of contracts on the system, to meet the criteria below:
B1.01	The system supports efficient management of build, execution and operation of NEC3 and NEC4 contract suites, and other contract families or types, including the flexibility to use bespoke contract conditions where required by NDA group organisations.
B1.02	The system supports the management of other types of contracts, for example Model Services contracts and other Government contracts such as those from the Crown Commercial Service.
B1.03	The system provides a repository for the storage of contract and related documents, shared between the contractor and the NDA organisation. Documents placed in the repository can be linked/tagged to a given event on a contract, but it is also possible to see all documents for a contract in one place.
B1.04	Contracts must be able to be assigned as a minimum to a given department, site, programme, Work Breakdown Structure (WBS) element(s) and/or category, framework, contract type and contract option ('site' enables all contracts in operation at a given location to be identified and monitored).

OFFICIAL

	Administrators must be able to configure the master data for these assignments as the organisation develops and changes. These assignments should be visible and able to be used to filter in reports/analytics.
B1.05	Contracts must be linked to the relevant contractor(s), using the master data for contractors on the system.
B1.06	Contracts should be able to be set up such that the commitment and progress of the contract can be set for each year of operation but can also be linked together, to facilitate both annual and overall reporting.
B1.07	<p>The system offers configurable workflows for contract delivery, including (but not limited to) the design of delegated approvals at different levels for Instructing Task Orders and compensation events and accepting quotes, and reporting should be available to show workflow progress and status for tasks so that the user approving a task can be identified.</p> <p>There is a requirement for flexibility in the workflow configuration, in order to support the segregation of duties required at the NDA (for example, in obtaining financial approvals prior to formal issue to the contractor).</p>
B1.08	Administrators should be able to adjust the standard configuration of a template role assigned to a user, at the level of an individual contract.
B1.09	Users should be able to adjust the types of system alert emails they receive for a contract, so that they only receive the ones they need to action (for example, Compensation Events).
B1.10	Administrators should be able to add text notes to a user's profile.
	Bidder response: (Word limit 2500):
B2	Describe how the system supports the end-to-end project management of contracts, to meet the criteria below:

OFFICIAL

B2.01	For the NEC3 and NEC4 contract suites and equivalent contract types and families, the system provides a suite of pre-configured content (processes, forms, tasks, reports etc) based on best practice.
B2.02	The system provides an audit trail of changes to contracts, and effective version control.
B2.03	The system supports the scheduling and management of large scale portfolio/programmes and projects with multiple contracts and offers good end-to-end visibility of the various contracts.
B2.04	The system supports rules-driven notification and escalation of workflow milestones, task overruns etc. The period of replies must be user defined as per the contract agreements and able to be used to analyse metrics.
B2.05	The system enables NDA, contractors and consultants to collaborate in contract/project delivery with shared visibility of progress and tasks/events.
B2.06	The system supports the maintenance of risk and issue logs for contracts, the documenting of risk resolution meetings and reporting of risk status and all other communications. For all communications, the user must be able to select 'Reply required' or 'Reply not required' as appropriate.
B2.07	<p>The system supports the management of project manager instructions, task orders, general communications, assessments, early warnings, compensation events, programmes, payment assessments, technical queries etc, with the ability to support party private notes. Users can report on status of these from an outstanding and aged perspective.</p> <p>It is also desirable that these events can be linked together e.g. task orders with general communications, though any notifications under the contract must be sent separately in compliance with 13.7 of the TSC & ECC NEC3 and equivalent in NEC4.</p> <p>The system must be able to record risk reductions for early warnings with reports available that show where risk reductions are missing.</p>
B2.08	The system supports summaries / registers of key information such as but not limited to compensation events and drawings or other key contract communications.
B2.09	The system provides a summary of the RAG and completion status of events associated with a contract, to prompt reminders to the relevant users for completion.

OFFICIAL

B2.10	The system supports a standard process for the assessment and certification of the Price of work Done to Date and the receipt of Applications for Payment and forecasts. The system supports all NEC3 Main Options and X19 Task Order option and NEC4 equivalent.
B2.11	The system supports payment processes in accordance with contractual requirements.
B2.12	The system supports (and prompts) closing a project/contract once it is completely fulfilled as per the completion of closeout checklist indicator fields on that project/contract's record. Data for closed projects/contracts must be held (and archived) as per NDA Group data retention requirements.
B2.13	Once a project is completed, the administrator should be prompted to archive it and download a summary report.
	Bidder response: (Word limit 3000)

	Interfaces
C1	Describe the system's interfacing capabilities, to meet the criteria below:
C1.01	The system supports connection with an MS Azure analytics/data visualisation platform where data from the system can be joined with data from other systems in the landscape, including spend against contract data from ERP systems, to build performance dashboards and provide aggregated reports to cross-government systems (see Data Dictionary attached in Volume 6).
C1.02	The system can interface via API with the master contract management system (Atamis 3.0) to ensure key header data is maintained in sync – e.g. changes to contract master data in either system are replicated across the systems (new dates, variations, personnel, ownership etc).

OFFICIAL

C1.03	The system can interface via API with the master contractor database (Atamis 3.0) to ensure contractor master data is maintained in sync as 'one version of the truth'.
	Bidder response: (Word limit 2000)

	Reporting
D1	Describe how the system provides for flexible reporting and analysis, to meet the criteria below:
D1.01	<p>The system supports a suite of operational reports to support the management of contract and team performance (including against KPIs or SLAs, with trends), with managers having clear visibility of contract status and project progress for assigned team members.</p> <p>Key reports shall include but not limited to:</p> <p>Events managed (overdue, efficiency of responses etc.)</p> <p>Communications dealt with on time (and aged communications). (We expect to report at the lowest level i.e. events (individual communications) dealt with on time and the system should consider extensions of time as part of the reporting).</p> <p>Programme status, programme acceptances</p> <p>Project value, agreed compensation events, change in planned completion and other project milestones</p> <p>Early Warning status including detail on Risk Reduction proposals</p> <p>Contract health-check reports. This shall include benchmarking and comparing contracts and projects as part of the health-check</p> <p>Contract financial information</p>

OFFICIAL

	Where relevant, reports are able to be filtered by contract, contractor, programme or site (location).
D1.02	<p>The system supports a suite of reports to manage the governance of the system, including but not limited to:</p> <ul style="list-style-type: none"> - User lists – when people last logged on, their employer, the contracts they are attached to and with which user role - Financial thresholds per user per contract
D1.03	The system also provides overall reporting/dashboards for senior management monitoring, including the functionality to create charts.
D1.04	The data available to users in reporting can be restricted by their user role/access profile.
D1.05	<p>Designated users have access to create or modify reports across the system relying on existing data and fields, in response to developing business needs, without the need to use development time with the Supplier. Reports must be able to be automatically published to groups of users as required.</p> <p>Reporting periods must be configurable to NDA accounting periods.</p>
D1.06	Users can download raw data and reports in a range of formats, including but not limited to .csv and .xls/.xlsx formats, for use elsewhere.
D1.07	Designated users have access to upload bulk data to the system in .csv and .xls/.xlsx formats, and uploads must be without additional charges by the Supplier.
	Bidder response: (Word limit 2000)

	Implementation
E1	Describe how you would approach implementation of your proposed solution to meet the criteria below:
E1.01	The Supplier has a controlled and organised approach to project initiation, delivery and exit with clearly defined roles and responsibilities, and project and resource plans that are actively monitored and managed to ensure adherence to time, cost and quality. Where a bidder is a consortium, roles and responsibilities between consortium members are effectively managed to provide a seamless service to NDA.
E1.02	The Supplier has a robust approach to risk management, which ensure risks (threats and opportunities) are identified, assessed and controlled during the project. The Supplier collaborates with NDA to mitigate threats and realise opportunities.
E1.03	The Supplier has a clear approach to quality management that ensures successful implementation of the proposed solution and ongoing service delivery. There is a focus on continuous improvement throughout the life of the contract post system.
E1.04	The Supplier is flexible and agile. The Supplier provides the Project Victory team and the Implementation Leads in each of the businesses with configuration options to meet individual needs and ways of working across multiple sites and stakeholders, recognising that sometimes one size doesn't fit all. The Project Victory team and the Implementation Leads will endeavour to align processes and project templates wherever possible, however.
E1.05	User Acceptance Testing (UAT) is properly resourced by the Supplier. NDA users, who are undertaking the testing, are appropriately briefed in advance and supported through the process. Feedback from users is co-ordinated and reflected in the configuration of the system.
E1.06	The Project Victory team in NDA and the Implementation Leads in each of the businesses are supported to deliver change. For example, the Supplier provides input to communications to end users; the Supplier delivers training and user guides to end users.
E1.07	End users are supported directly during the early months of using the Supplier's proposed solution, recognising that it will take time for some users to build confidence in how the system works and how to use it even after training has been delivered (there will be a period of 'bedding in').
E1.08	The Supplier has a robust approach to developing and maintaining relationships with suppliers of third-party systems, where relevant. The approach ensures on-time delivery of reliable application programming interfaces, with clear roles and responsibilities for their ongoing maintenance and testing.
	Bidder response: (Word limit 2500 - <i>the Plan on a Page and People Resource Plan are excluded from the word limit</i>)

OFFICIAL

	<p><i>Note: in addition to responding to requirements E1.01 to E1.08, bidders should provide a high-level ‘plan on a page’ showing the key stages in the implementation: Mobilise, Design, Build, Test, Train, Operate with indicative dates assuming a start date as set out in Schedule 6.1 (Implementation Plan). Bidders should also provide a People Resource Plan for each stage (numbers of people, ideally with names and areas of responsibility).</i></p>
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	Social Value
F1	<p>Training and Upskilling:</p> <p>Detail how your organisation’s (and any sub-contractor’s) approach to recruiting and training early talent will be undertaken when delivering this contract. Bidders should consider Themes 1, 2 and 4 of The Social Value Model when preparing their response (see Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK (www.gov.uk)).</p>
F1.01	Bidder response: (Word limit 750)

F2	<p>Health and Wellbeing:</p> <p>Detail the measures you will take to maintain, and where required improve, the level of health and wellbeing of staff working on the provision of this contract. Bidders should consider Theme 5 of The Social Value Model when preparing their response (see Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK (www.gov.uk)).</p>
F2.01	Bidder response: (Word limit 750)

PART 2: USER EXPERIENCE

Instructions for Functional testing scenarios

Approach

Bidders are asked to prepare for a series of live functional tests which will be scheduled following the submission of Initial Tenders. The three highest-scoring Bidders following the evaluation of Part 1 will be invited to participate in the testing stage (for details see Volume 1).

Below are descriptions of four test scenarios which will be assessed by a group of evaluators from across the NDA group to test the requirements set out below. For each of these, bidders are asked to prepare a test script for evaluators to follow and to provide a representative to facilitate the test and assist with any operational issues.

The script should enable a user to carry out the relevant activities, based on generic example data in the test system. It is not expected that test systems will be configured for NDA data.

As well as the test scenarios themselves, evaluators will also assess the following general user experience requirements:

TX.01	<p>Data is maintained at high quality and data entry is eased by:</p> <ul style="list-style-type: none"> - Standard formatting across the system, including UK style for dates, currency etc. - Use of drop-down/checked boxes/radio buttons to limit free text entry wherever possible - Fields can be marked as mandatory or optional for entry by system administrators - Free-text fields have character limits stated
TX.02	The system provides users with both general and context-sensitive help information to support both initial familiarisation and to lead users through a process journey. Video material, or similar, is available to guide users, including suppliers.
TX.03	The system is straightforward to access and navigate, with a clean, clear, modern, and user-intuitive design throughout

Test A – Contract Setup 90 minutes

Scope: From beginning an NEC3 contract setup to contract ready for operation

The user will expect to select a contract template, configure it for the project in hand, and configure the users required, and upload contract documents, such that the contract is ready to be operated. This should include the contractor's view of the configured contract.

Requirements to be tested:

TA.01	The system provides standard templates for the NEC3 and NEC4 families of contracts
TA.02	The contract roles for NEC3 and NEC4 contracts can be configured and assigned, and updated for a change of personnel
TA.03	The contract master data can be entered
TA.04	The contract documents can be loaded to a repository

Test B – Processing a NEC3 Compensation Event 60 minutes

Scope: From a requirement for CE to completion and contract update

The user will expect to raise a compensation event, see it through an approval process, and agreement with the contractor, and finalise it to the contract.

Requirements to be tested:

TB.01	The system supports raising and processing of a compensation event on an NEC3 contract
TB.02	The system communications and workflows are clear and effective
TB.03	The system is able to report on progress, status and completion

Test C – System Administration 90 minutes

Scope: User Administration, Contractor Administration, Transaction auditing, Bulk Data import and export

OFFICIAL

The system administrators will expect to see how a user is created and maintained on the system, including allocation and maintenance of role profiles. They will also expect to see the Contractor and Contractor User administration facilities, including creation and maintenance and locking of users. Finally, they will expect to see the facilities for transaction auditing and bulk import / export of data from the system.

Requirements to be tested:

TC.01	Create a new NDA site user, maintain user detail (name change), lock / unlock a user, and delete / archive a user.
TC.02	Create a new contractor record and associated user(s), maintain detail and lock / unlock the contractor record.
TC.03	Allocate and remove roles from a user both newly created and already allocated to an in-flight contract.
TC.04	Demonstrate the audit trail on user activity in the system
TC.05	Demonstrate the functionality to bulk export data and bulk import data

Test D – Reporting capability 60 minutes

Scope: User Administration, System Governance, Contract Management efficiency reporting

End-users will expect to run system governance reports as well as various contract health reports

Requirements to be tested:

TD.01	Run a report to view live users, including their employer and when they last logged in
TD.02	Run a report to view financial thresholds per user per contract
TD.03	Run a report to view roles per user per contract
TD.04	Run a report to view Programme status per contract

OFFICIAL

TD.05	Run a general contract health report for any contract
TD.06	Run events managed reports e.g., Compensation Events or Communications managed on time and overdue
TD.07	Run a report that identifies the number of Early Warnings showing whether or not they have associated Risk Reduction proposals recorded against them.

PART 3: FINANCIAL, COMMERCIAL & LEGAL REQUIREMENTS

This Financial, Commercial & Legal Requirement section evaluates the Bidder's understanding of, and approach to, meeting the Commercial and Legal requirements of the NDA, as contained in the relevant schedules of the Managed Service Agreement contained in Volume 7.

The Bidder is requested to provide a suitable response to each of these requirements, and to take into account the overarching requirement of the NDA for Innovation in both technology and associated processes.

PRICES OF MANAGED SERVICES DELIVERY		%
P1.01	The Bidder is required to submit its pricing in the Microsoft Excel provided in Volume 5, which will be evaluated by the NDA in accordance with the methodology set out in Volume 1 and Volume 5.	30%
P1.02	The Bidder is required to provide a comprehensive Pricing Matrix by completing the Microsoft Excel file provided in Volume 5.	Pass/Fail

COMPLIANCE & ELIGIBILITY		%
CE.01	COVERING LETTER The Bidder is required to provide a letter as requested in Annex B of Volume 1 (Instructions to Bidders).	Pass/Fail

MANAGED SERVICES AGREEMENT & SCHEDULES – NDA PROVIDED:		%
MSA.01	The Bidder is required to submit Annex B – Volume 1 (Instructions to Bidders) confirming in principle acceptance of contracting with NDA on the basis of the Terms and Conditions of the Managed Services Agreement included in Volume 7.	Pass/Fail
MSA.02	The Bidder is required to indicate those areas of the Managed Services Agreement that it may wish to amend. The Bidder shall complete the issues log as set out in Annex A of Volume 3 (Invitation to Tender).	Not scored
MSA.03	The Bidder must complete the Managed Services Agreement Schedules as detailed in Section 4 - Volume 3 and provide details of any rationale behind the construction of any Schedule.	Pass/Fail

VOLUME 6

PURPOSE

The purpose of this Volume 6 (*Other Information*) is to provide any other information that the Bidder may find useful in developing their Responses to this procurement.

The contents of this document are:

1. NDA Project Victory Interfaces Overview



NDA Project Victory
Interfaces Overview for

2. Project Victory Data Dictionary



Project_Victory_Data_
Dictionary v2.0 11-01

3. Volumetric data

Indicative volumes, subject to change.

Contract Type	Total
NEC3 Engineering and Construction contract	957
NEC3 Framework Contract	116
NEC3 Professional Services	128
NEC3 Term Service	157
NEC3 other	99
NEC4	119
ECC (NEC 4)	39
TSC	217
PSC	2,389
Non-NEC contracts	51

Indicative volumes, subject to change.

User Type	Total
Project Manager	2,942
Supervisor	226
Super user	182
Other	69
Contractor-side	3,415

For the purpose of Volume 5, this equates to approximately 182 x Super Users; 3,168 x General Users; 69 x Light Users; and 3,415 x Contractor Users.

SCHEDULE 2.2

PERFORMANCE LEVELS

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

I. DEFINITIONS

- ii. In this Schedule, the definitions set out in Schedule 1 shall apply.

PART 1

PERFORMANCE INDICATORS AND SERVICE CREDITS

1. KEY PERFORMANCE INDICATORS

- (a) **Error! Reference source not found.** sets out the Key Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- (b) The Supplier shall monitor its performance against each Key Performance Indicator and shall send the Authority a report detailing the level of performance actually achieved in accordance with Part 2.
- (c) Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated every three months (the 'measurement period'), in accordance with paragraphs **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.**

SERVICE POINTS

- (a) If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- (b) If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in paragraph **Error! Reference source not found.**
- (c) The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in **Error! Reference source not found.** depending on whether the KPI Failure is a Minor KPI Failure, or a Serious KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of paragraph **Error! Reference source not found.** shall apply.

REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

- (a) If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "**Repeat KPI Failure**".
- (b) The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:-

$$SP = P \times 2$$

where:-

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in **Error! Reference source not found.** depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, or a failure to meet the KPI Service Threshold.

Worked example based on the following Service Points regime for Service Availability

Service Availability Severity Levels		Service Points
Target Performance Level	99%	0
Minor KPI Failure	98.0% - 98.9%	1
Serious KPI Failure	96.0% - 97.9%	2
KPI Service Threshold	Below 96%	3

Example 1

If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Serious KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (ie $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2

If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Serious KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (ie $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.

Related KPI Failures

- (c) If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

PERMITTED MAINTENANCE

The Supplier shall agree in writing with the Authority planned Service Downtime for Permitted Maintenance in any one Service Period. This shall take place between the hours and on the day agreed unless otherwise agreed in writing with the Authority.

SERVICE CREDITS

- (a) Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- (b) The Authority shall use the Performance Monitoring Reports provided pursuant to Part 2, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART 2

PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within ten (10) Working Days of the end of each Service Period, the Supplier shall provide:-

- 1.1.1 a report to the Authority Representative which summarises the performance by the Supplier against each of the Key Performance Indicators as more particularly described in paragraph **Error! Reference source not found.** and provides the underlying data that supports this (the "Performance Monitoring Report").

Performance Monitoring Report

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:-

Information in respect of the Service Period just ended

- 1.2.1 for each Key Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Service Periods and the underlying data that supports such performance;
- 1.2.2 a summary of all Performance Failures that occurred during the Service Period and the supporting information relating to the cause of any such Performance Failures;
- 1.2.3 the severity level of each KPI Failure which occurred during the Service Period and whether each KPI Failure which occurred during the Service Period fell below the KPI Service Threshold;
- 1.2.4 which Performance Failures remain outstanding and progress in resolving them;
- 1.2.5 for any Material KPI Failures occurring during the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- 1.2.6 the status of any outstanding Rectification Plan processes, including:-
- (a) whether or not a Rectification Plan has been agreed; and
 - (b) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
- 1.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 1.2.8 the number of Service Points awarded in respect of each KPI Failure;
- 1.2.9 the Service Points to be applied, indicating the KPI Failure(s) to which the Service Points relate;
- 1.2.10 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan and confirmation of any follow on actions or dates of re-testing to achieve compliance;
- 1.2.11 relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- 1.2.12 such other details as the Authority may reasonably require from time to time;

Information in respect of previous Service Periods

1.2.13 a rolling total of the number of Performance Failures that have occurred over the past six (6) Service Periods;

1.2.14 the amount of Service Credits that have been incurred by the Supplier over the past six (6) Service Periods;

1.2.15 the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

1.2.16 any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter.

1.3 The Performance Monitoring Report shall be reviewed and its contents agreed by the Parties at the next **“Performance Review Meeting”** held in accordance with paragraph **Error! Reference source not found.**

1.4 The Parties shall attend meetings on a quarterly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):-

1.4.1 take place within ten (10) Working Days of the Performance Monitoring Report being issued by the Supplier;

1.4.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and

1.4.3 be attended by the Supplier Representative and the Authority Representative.

1.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure.

2. PERFORMANCE RECORDS

2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of twelve (12) months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.

2.2 In addition to the requirement in paragraph **Error! Reference source not found.** to maintain appropriate documents and records, 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 of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.

2.3 The Supplier shall ensure that the Performance Monitoring Report, and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

3 PERFORMANCE VERIFICATION

The Authority reserves the right to verify the availability of the IT Environment and/or the Services and the Supplier's performance under this Agreement against the Key Performance Indicators including by sending test transactions through the IT Environment or otherwise.

APPENDIX 1

KEY PERFORMANCE INDICATORS

PART 1

KEY PERFORMANCE INDICATORS TABLES

The Key Performance Indicators that shall apply to the Operational Services and Optional Services are set out below:-

1. KEY PERFORMANCE INDICATORS

No	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI 1	Service Availability	See paragraph 2 of Part 2 of this Appendix	Monthly	Target Performance Level: Performance $\geq 99\%$ Minor KPI Failure: 98.0% – 98.9% Serious KPI Failure: 96.0% – 97.9% KPI Service Threshold: below 96%	0 1 2 3
KPI2	Not used				
KPI 3	Not used				
KPI 4	Average Help Desk Response Times for severity level. 2 (High)	See paragraph Error! Reference source not found. of Error! Reference source not found. of this Appendix	Monthly	Target Performance Level: within 4 hours Minor KPI Failure: over 4 hours up to 5 hours Serious KPI Failure: over 5 hours up to 7 hours KPI Service Threshold: over 7hours	0 1 2 3
KPI 5	Average Help Desk Response Times for severity level. 1(Critical).	See paragraph Error! Reference source not	Monthly	Target Performance Level: within 2 hours Minor KPI Failure: over 2 hour up to 3hours	0 1

No	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
		found. of Error! Reference source not found. of this Appendix		Serious KPI Failure: over 3 hours up to 5 hours KPI Service Threshold: over 5 hours	2 3
KPI 6	Average Fix Rate for Resolution of Logged Issues for severity level. 2 (High)	See paragraph Error! Reference source not found. of Error! Reference source not found. of this Appendix	Monthly	Target Performance Level: within 8 hours Minor KPI Failure: over 8 hours up to 9 hours Serious KPI Failure: over 9 hours up to 10 hours KPI Service Threshold: over 10 hours	0 1 2 3
KPI 7	Average Fix Rate for Resolution of Logged Issues for severity level. 1(Critical).			Target Performance Level: within 4 hours Minor KPI Failure: over 4 hours up to 5 hours Serious KPI Failure: over 5 hours up to 6 hours KPI Service Threshold: Over 6 hours	0 1 2 3
KPI 8	Satisfaction Surveys	See paragraph Error! Reference source not found. of Error! Reference source not found. of this Appendix	Per issue logged	Target Performance Level: >90% neutral or positive responses Minor KPI Failure: 80-90% neutral or positive responses Serious KPI Failure: 70-79.9% neutral or positive responses KPI Service Threshold: below 70% neutral or positive responses	0 1 2 3
KPI 9	IT Health Check	See paragraph Error! Reference source not found. of Part 2 of this Appendix	Annually	IT Health Checks must be carried out in accordance with Schedule 2.4 paragraph 7.	N/A

No	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI 10	Breach of Security	Has the definition set out in Schedule 1 and Part 2 below	Annually	<p>Target Performance Level: Zero Breaches of Security</p> <p>Serious KPI Failure: 1 Breach of Security during the Initial Contract Period, and each subsequent Contract Period thereafter.</p> <p>KPI Service Threshold: More than one Breach of Security during the Initial Contract Period, and each subsequent Contract Period thereafter.</p>	<p>0</p> <p>50% Annual Contract Value</p> <p>100% Annual Contract Value</p>

PART 2

DEFINITIONS AND DETERMINATION

1. AVAILABLE

1.1 The IT Environment and/or the Services shall be Available when:-

- 1.1.1 End Users are able to access and utilise all the functions of the Supplier System and/or the Services;
- 1.1.2 the Supplier System is able to process the Authority Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and
- 1.1.3 all Performance Indicators other than Service Availability are above the KPI Service Threshold.

2. SERVICE AVAILABILITY

2.1 Service unavailability will cover the failure of software, hardware and associated services and systems within thinkproject's control up to and including the boundary between thinkproject's hosting environment and the internet.

2.2 The following categories are excluded from the Availability Target:

- 2.2.1 planned downtime, which shall be any period outside of the hours of 0600hrs to 2100hrs GMT, Monday to Friday and 0800hrs to 1700hrs GMT, Saturday, Sunday and public holidays, for which thinkproject uses commercially reasonable endeavours to give 8 business hours or more notice that the Services will be unavailable;
- 2.2.2 downtime caused by use of the Services contrary to thinkproject's Documentation or modification or alteration of the Services by any party other than thinkproject or thinkproject's duly authorised contractors or agents.

2.2.3 downtime caused by circumstances beyond thinkproject's reasonable control, including without limitation, a Force Majeure Event.

2.3 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:-

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.4 When calculating Service Availability in accordance with this paragraph **Error! Reference source not found.**:-

2.4.1 Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Part 1 paragraph 4 shall be subtracted from the total number of hours in the relevant Service Period; and

2.4.2 Service Points shall accrue if:-

- (a) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
- (b) where Permitted Maintenance undertaken by the Supplier exceeds the agreed number of hours in any Service Period.

3. **HELP DESK RESPONSE TIMES**

3.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to provide a response to a Service Incident reported to the Supplier for severity levels 1 (Critical) and 2 (High). It is expected that the normal mechanism for logging an issue will be via either a customer help portal or via email to a designated address which provides an issue number automatically, Telephone is expected to be used only in the case of urgent issues.

3.2 The Help Desk Response Time shall be the average Help Desk Response Time measured over the course of a Service Period.

3.3 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Authority in accordance with the provisions of Part 2 of this Schedule.

3.4 Superusers and Users may raise support tickets in connection with the Services through the CEMAR System support centre and thinkproject will respond to them in accordance with the service levels set out in Clause 3.6 below.

3.5 thinkproject's support, unless agreed otherwise, is limited to the operation of the CEMAR System and does not extend to include, among other things, support or guidance in the use of the NEC or other contract forms.

3.6 Support response targets are given below in terms of Business Day(s) and Normal Business Hours:

Severity	Description	Response Time	Service Recovery
----------	-------------	---------------	------------------

1 Critical	CEMAR System completely non-operational, or key data lost, or the majority of Users prevented from using the system.	Within 2 hours	Within 4 hours
2 High	Functional or operational issue with the system, which does not render the system inoperable, but does significantly impact daily operation of the system. The issue being considered sufficiently urgent to warrant an accelerated resolution turn-round.	Within 4 hours	Within 8 hours
3 Medium	Functional or operational issue with the system, which does not render the system inoperable, but does impact daily operation. The issue not warranting an accelerated resolution turn-round.	Within 8 hours	Within 16 hours
4 Low	Other problems which do not disrupt normal working, or enhancement requests, or general enquiries/ clarifications.	Within 16 hours	N/A

Business Day: a day (other than a Saturday or Sunday) on which banks in London are normally open for general business.

Normal Business Hours: means the hours between 0830hrs and 1730hrs GMT Monday to Friday excluding UK public holidays.

4 FIX RATE

- 4.1 The "**Fix Rate**" of a Service Incident is the percentage of Service Incidents reported to the Supplier Resolved within the Target Performance Level for severity levels, 1 (Critical) and 2 (High)(see KP6 and KP7 above respectively).
- 4.2 Where "**Resolved**" means in relation to a Service Incident either:-
- 4.2.1 the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or
 - 4.2.2 the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority.
- 4.3 The Supplier shall measure Fix Rates as part of its service management responsibilities and report periodically to the Authority on Fix Rates as part of the Performance Monitoring Report.

5 SATISFACTION SURVEYS

- 5.1 In order to assess the level of performance of the Supplier, the Thinkproject will undertake Service Incident ticket feedback. (each such survey a "**Satisfaction Survey**"), the results of which will be reported at the Performance Review Meetings. The subject matter of Satisfaction Surveys will include:-
- 5.2 A "Good" or "Bad" rating provided by the end-user who raised the Service Ticket via Thinkproject's support centre.

6 IT HEALTH CHECKS

IT Health Checks must be carried out in accordance with Schedule 2.4 paragraph 7.

7 DATA BREACH

- 7.1 A data breach that does not have any significant impact on or consequences for the Authority and/or Service Recipients will not be considered as a Serious KPI Failure for KPI 10. For clarity, some

OFFICIAL

examples of Data Breach which would indicate a Serious KPI Failure include where a failure in the Supplier system or Supplier support services are responsible for:

- a) Unauthorised access to data and/or information that jeopardises the delivery of the Authority's mission to clean up the UK's earliest nuclear sites safely, securely and cost-effectively with care for people and the environment.
- b) Unauthorised access to data and/or information that requires a procurement project or contract to be set aside.
- c) Unauthorised access to and/or loss of information constituting the Intellectual Property of a third party e.g. information belonging to a bidder or supplier which could result in financial loss to that bidder or supplier and reputational and/or financial impact to the Authority and/or other Service Recipients. In this context, unauthorised access means access by any party other than the Authority and other Service Recipients and the owner of the Intellectual Property. Intellectual Property in this context means copyright, patents, inventions, semiconductor topography, trademarks, designs, knowhow, trade secrets and other confidential information such as pricing, tender submissions and data and information relating to supplier performance.
- d) Unauthorised access to and/or loss of any information held in the system which could comprise the security of any Authority sites and/or the sites of other Service Recipients e.g. site drawings or plans.
- e) In the unlikely event the Authority requires the system to hold Official-Sensitive Nuclear Information (which would require additional levels of security in the system to be agreed with the Supplier) a breach constitutes the unauthorised access and/or loss of any Official-Sensitive Nuclear Information however small.
- f) A GDPR breach where the ICO recommends remedial actions to be made. IT Health Checks must be carried out in accordance with Schedule 2.4 paragraph

OFFICIAL

SCHEDULE 2.3

STANDARDS

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

I. DEFINITIONS

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

1. GENERAL

- 1.1 Throughout the Term, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier's provision, or the Authority's or a Service Recipient's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 1.2 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 or a Service Recipient's receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.

SCHEDULE 2.4

SECURITY MANAGEMENT

Issue No:	Summary of Change:
V0.1	Version for issue with ITT
V0.2	Update for contract

[Redacted]



Certificate of Registration

This is to certify that the Management System of:

thinkproject UK Ltd

Welland House, Meteor Court, Barnett Way, Barnwood, GL4 3GG

has been approved by Alcumus ISOQAR and is compliant with the requirements of:

ISO 22301: 2019



Certificate Number:	16043-BCM-001
Initial Registration Date:	16/01/2020
Previous Expiry Date:	16/01/2023
Recertification Audit Date:	05/10/2022
Re-issue Date:	21/10/2022
Current Expiry Date:	16/01/2026

Scope of Registration:

Development, testing, deployment, configuration, support and hosting of software for contract management and programme controls.

Signed:
Alyn Franklin, Chief Executive Officer
(on behalf of Alcumus ISOQAR)

This certificate will remain current subject to the company maintaining its system to the required standard. This will be monitored regularly by Alcumus ISOQAR. Further clarification regarding the scope of this certificate and the applicability of the relevant standards' requirement may be obtained by consulting Alcumus ISOQAR

Alcumus ISOQAR Limited, Cobra Court, 1 Blackmore Road, Stretford, Manchester M32 0QY.

T: 0161 865 3699 **E:** isoqarenquiries@alcumus.com **W:** alcumus.com/isoqar

This certificate is the property of Alcumus ISOQAR and must be returned on request.

Certificate

Standard **ISO/IEC 27001:2013**

Certificate Registr. No. **01 153 2000561**

Certificate Holder:

thinkproject

thinkproject Holding GmbH

Mühlendorfstr. 8
81671 München
Germany

including the locations according to annex

Scope:

The business processes involved in the development and operation of the thinkproject construction intelligence platform for the products TP CDE, EPLASS CDE, CONCLUDE CDE, CEMAR, RAMM and DESITE BIM . This includes processes for Operations, Professional Services, Product Management, Product Development, Quality Management, Marketing, Administration and Finance

Statement of Applicability dated 01.12.2021

Proof has been furnished by means of an audit that the requirements of ISO/IEC 27001:2013 are met.

Validity:

The certificate is valid from 2021-05-21 until 2024-05-20.

2022-03-21 (Change)

Handwritten signature

TÜV Rheinland Cert GmbH
Am Grauen Stein · 51105 Köln

© TÜV, TÜV and TÜV are registered trademarks. Utilisation and application requires prior approval.

www.tuv.com



DAKKS
Deutsche
Akkreditierungsstelle
D-ZM-16031-01-00

TÜVRheinland®
Precisely Right.


**CYBER
ESSENTIALS
PLUS**

CERTIFICATE OF ASSURANCE

Thinkproject UK Ltd

COMPLIES WITH THE REQUIREMENTS OF THE CYBER ESSENTIALS PLUS SCHEME

NAME OF ASSESSOR : Ben Regan

CERTIFICATE NUMBER : IASME-CEP-008869

PROFILE VERSION : Evendine

DATE OF CERTIFICATION : 2022-04-14

RECERTIFICATION DUE : 2023-04-14

SCOPE : The scope of the Cyber Essentials assessment covers all Thinkproject UK devices, networks and infrastructure associated with the CEMAR product. Other products provided by Thinkproject UK are out of scope.

CERTIFICATION MARK



CERTIFICATION BODY



CYBER ESSENTIALS PARTNER


**IASME
CONSORTIUM**

The Certificate certifies that the organisation was assessed as meeting the Cyber Essentials Plus implementation profile and thus that, at the time of testing, the organisation's ICT defences were assessed as satisfactory against commodity based cyber attack. However, this Certificate does not in any way guarantee that the organisation's defences will remain satisfactory against a cyber attack.

OFFICIAL

SCHEDULE 2.5

INSURANCE REQUIREMENTS

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability 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 **Error! Reference source not found.** 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 date on which the relevant risk commences.
- 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 operating the same or substantially similar business 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:-
- 1.3.1 of good financial standing;
 - 1.3.2 appropriately regulated;
 - 1.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and
 - 1.3.4 except in the case of any Insurances provided by an Affiliate of the Supplier, 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 Agreement and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

Without limiting the other provisions of this Agreement, the Supplier shall:-

- 2.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- 2.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- 2.3 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 cancel, rescind or suspend any of the Insurances or cover, or to treat any of the Insurances, cover or claim as avoided in whole or in part 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 INSURANCES

- 4.1 The Supplier shall upon the Effective Date and within fifteen (15) Working Days after the renewal or replacement 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.
- 4.2 If the Insured is required to provide Insurance beyond the end of the Term by this Agreement, then the Supplier shall continue to provide such evidence as set out in and in accordance with paragraph 4.1 for so long as this requirement continues.
- 4.3 The Supplier shall also provide any further information reasonably requested by the Authority in relation to the Insurances at any time during the Term on reasonable notice.

5. CANCELLATION

- 5.1 Subject to paragraph **Error! Reference source not found.**, the Supplier shall notify the Authority in writing at least thirty (30) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under paragraph **Error! Reference source not found.**, paragraph **Error! Reference source not found.** shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6. INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4 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 Agreement or otherwise.

7. LIMIT OF LIABILITY

- 7.1 Neither failure to comply, nor full compliance, with the insurance provisions of the Agreement shall limit or relieve the Supplier of its other liabilities and obligations under this Agreement.

APPENDIX 1

REQUIRED INSURANCES

PART 1

INSURANCE CLAIM NOTIFICATION

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 one hundred thousand pounds sterling £100,000 relating to or arising out of the provision of the Services or this Agreement 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.

PART 2

THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1. INSURED

The Supplier.

2. INTEREST

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

2.2 loss of or damage to physical property;

happening during the period of insurance (as specified in paragraph **Error! Reference source not found.**) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

3. LIMIT OF INDEMNITY

3.1 Not less than Two Hundred and Fifty Thousand Pounds (£250,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but One Million Pounds (£1 million) in the aggregate per annum in respect of products and pollution liability.

4. TERRITORIAL LIMITS

4.1 The Supplier shall meet its insurance obligations under United Kingdom Law in full as set out in 0.

5. PERIOD OF INSURANCE

From the date of this Agreement for the Term and renewable on an annual basis for the duration of unless agreed otherwise by the Authority in writing.

6. COVER FEATURES AND EXTENSIONS

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

OFFICIAL

- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of 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**
- Not to exceed £250 for each and every third party property damage claim (personal injury claims to be paid in full).

PART 3

UNITED KINGDOM COMPULSORY INSURANCES

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

PART 4

ADDITIONAL INSURANCES

The Supplier shall meet as a minimum the insurance obligations as set out below:-

Employer's (Compulsory) Liability Insurance	£5 million in respect of each claim, without limit to number of claims and in the annual aggregate
Public Liability Insurance	£1 million in respect of each claim, without limit to number of claims and in the annual aggregate
Professional Indemnity Insurance	£1 million in the annual aggregate
Product Liability Insurance	£1 million in the annual aggregate
Cyber and Data Insurance	£1 million in the annual aggregate

And where reasonably required to defend against potential claims, a minimum insurance period of 6 years following the expiration or Ending of this Agreement unless agreed otherwise by the Authority in writing.

OFFICIAL

SCHEDULE 3

AUTHORITY RESPONSIBILITIES

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

1. **INTRODUCTION**

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be "Authority Responsibilities" and cross referenced in the table in paragraph **Error! Reference source not found.**
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.
- 1.3 Any capitalised terms used in this Schedule that are not defined in Schedule 1 (*Definitions*) shall have the meanings as defined in Schedule 2.1 (*Service Description*).

2. **GENERAL OBLIGATIONS**

The Authority shall:-

- 2.1 perform those obligations of the Authority which are set out in the Clauses of this Agreement and the paragraphs of the Schedules (except Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*));
- 2.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term;
- 2.3 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Implementation Plan;
- 2.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- 2.5 procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

3. **SPECIFIC OBLIGATIONS**

- 3.1 The Authority shall, in relation to this Agreement perform the Authority's obligations identified as such in this Agreement the details of which are set out in Appendix 1 where the following definitions shall apply:-
- 3.1.1 "Responsible" shall have the meaning to have the job or duty of completing a task to enable the Supplier to deliver its obligations under this Agreement, for example reviewing or signing off documents;
- 3.1.2 "Accountable" shall have the meaning to be responsible for making sure decisions and actions are undertaken by the Authority and/or Service Recipients and that outputs meet the

Authority's requirements to enable the Supplier to deliver its obligations under this Agreement; and

- 3.1.3 "Support Role" shall have the meaning to provide assistance to the Supplier to enable the Supplier to perform its obligations under the contract, for example to identify gaps between the Supplier Solution and Authority requirements.

4. **ADDITIONAL OBLIGATIONS**

- 4.1 The Authority Responsibilities as set out in Appendix 1 and Appendix 2 of Schedule 6.1 (*Implementation Plan*) shall also apply.

APPENDIX 1

AUTHORITY OBLIGATIONS

Document	Location (paragraph)
<i>[Insert Schedule details here]</i>	<i>[Refer to specific paragraphs here]</i>
CEMAR SaaS Agreement (UK Version 9.3)	<p>The Client shall not:</p> <ul style="list-style-type: none"> a) copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software; or b) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; c) access all or any part of the Software or Services in order to build a product or service which competes with the Software and/or the Services; or d) use the Software or Services to provide services to third parties. <p>The Client shall:</p> <ul style="list-style-type: none"> a) appoint an Authorised Representative, who shall have the authority to contractually bind the Client on all matters relating to this agreement; b) provide thinkproject with the information necessary to enable Set up Services as identified in the Quotation; c) be responsible for appointing and supervising Superusers who will undertake support and administration duties for day-to-day matters on behalf of the Client relating to the CEMAR System, including the creation of new User Accounts, Client Contract(s) set up, and maintenance of User roles and permissions. thinkproject will provide Training for Superusers in accordance with the Quotation but will not assume any responsibility for their acts or omissions; d) provide all hardware, network connections and telecommunications links to the internet and other things necessary to access the Services. thinkproject shall not assume any responsibility for any problems, delays, delivery failures, nor any loss or damage arising from the Client's use of such hardware or failure of such telecommunication links or other things; and e) implement appropriate measures to prevent and report any unauthorised use of the

OFFICIAL

	Services, ensure that Authorised Users keep their User Account credentials secret and do not expose the Services to viruses or unlawful, harmful or infringing content or activity.
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SCHEDULE 4.1**SUPPLIER SOLUTION**

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

[Bidder Note: All relevant parts of the Supplier's response to this Schedule and any other Supplier-provided documents shall be included as additional appendices to this Schedule. The Supplier's response must include material relating to the headings of the sections in Volume 4, and the Supplier may add further material relevant to the Solution and the Authority's requirements documented in the Agreement:

- Overview of the Supplier Solution;
- Security, user management and experience;
- Master data management;
- Contract management solution;
- End-to-End project management of contracts
- Reporting and interfaces;
- Training and support;
- Mobilisation and configuration; and
- Any additional sections as appropriate.

1. DEFINITIONS

1.1 In this Schedule, the definitions set out in Schedule 1 shall apply.

2. DATA PROCESSING PARTICULARS

2.1 The data processing particulars referred to in Clause 22 (Protection of Personal Data) are included in Appendix 1.

3. SUPPLIER SOLUTION

3.1 The Supplier Solution comprises the Supplier Solution Overview in Appendix 2 and the Supplier's response to the Invitation To Tender in Appendix 3.

APPENDIX 1

DATA PROCESSING PARTICULARS

These are the data processing particulars referred to in Clause 22 (Protection of Personal Data).

[Bidder Note: This table will be completed using the information supplied as part of the Invitation to Tender Response.]

Data Processing Particulars	Details of Data Processing
The subject matter and duration of the Processing	Personal data as described in this table will be uploaded to the Supplier Solution to enable the Supplier to provide the Services.
The nature and purpose of the Processing	Personal data is required to enable the Supplier to provide Contract Management by way of the Supplier Solution, for example, contact details for key contacts at the Authority's suppliers will be processed on the Supplier Solution to enable the Authority's personnel to readily locate such details.
The type of Personal Data being Processed	Name, corporate contact details (including email and phone number), job role and IP address
The categories of Data Subjects	<ul style="list-style-type: none"> • Employees and Directors of companies that supply goods and services to the Authority and Service Recipients; and • Employees of the Authority and Service Recipients
Location of Processing	The UK, USA & EU (Germany)

OFFICIAL

APPENDIX 2

OVERVIEW OF SUPPLIER SOLUTION

[Bidder Note: This table will be completed using the information supplied as part of the Invitation to Tender Response.]

OFFICIAL

APPENDIX 3

[REDACTED]

SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

[Bidder Note: Bidders are required to complete this Schedule as part of its responses during the competition. All Bidder input is subject to review and acceptance by the Authority.]

I DEFINITIONS

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

1. COMMERCIAL SENSITIVE INFORMATION

- 1.1. The information of a commercial sensitive nature 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 is set out in Appendix 1.

OFFICIAL

APPENDIX 1

COMMERCIAL SENSITIVE INFORMATION

No.	Date	Item(s)	Duration of Confidentiality
1	13/5/2022	The Client acknowledges that any material provided to or accessible by the Client in connection with the Services and this agreement, including without limitation the IP, Pricing, Training and product specifications constitutes Thinkproject's Confidential Information	Linked to Contract

SCHEDULE 5
SOFTWARE – NOT USED

Issue No:	Summary of Change:
V0.1	Version for issue with ITT
V0.2	Not used – SaaS solution

OFFICIAL

SCHEDULE 6.1

[Redacted]

SCHEDULE 6.2

[Redacted]

SCHEDULE 7.1

CHARGES AND INVOICING

Issue No:	Summary of Change:
V0.1	Version for issue with ITT
V0.2	Update to reflect winning tender

I. **DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

PART A

PRICING

1. **GENERAL**

1.1 **This Schedule sets out the provisions relating to:-**

- 1.1.1 **the Charges applicable to the provision of the Services;**
- 1.1.2 **invoicing matters; and**
- 1.1.3 **other financial and economic matters relating to this Agreement.**

1.2 **The following Charges shall be payable by the Authority in accordance with this Agreement:-**

- 1.2.1 **Service Charges**
- 1.2.2 **Additional Service Charges;**
- 1.2.3 **Additional Development Charges;**

2. **APPLICABLE PRICING MECHANISM**

- 2.1 Service Charges shall be calculated using the pricing mechanisms specified in Appendix 1 and **Error! Reference source not found.** and on the basis of the rates and prices specified in **Error! Reference source not found.** as more particularly set out in this Schedule.
- 2.2 The Service Charges are not subject to indexation during the Initial Term, but indexation will be applied annually to any Extension year.
- 2.3 The pricing mechanisms set out in the tables in Appendix 1, **Error! Reference source not found.** and **Error! Reference source not found.** specify whether the pricing mechanism is:-
 - 2.3.1 **“Fixed Price”**, in which case the provisions of paragraph **Error! Reference source not found.** shall apply;
 - 2.3.2 **“Volume Based”**, in which case the provisions of paragraph **Error! Reference source not found.** shall apply;
 - 2.3.3 **“Time Based”**, in which case the provisions of paragraph 3 shall apply.

3. TIME SERVICE CHARGES

- 3.1 The Day Rates set out in section 3(a) of Appendix 1 shall be used to calculate the Time Service Charges due to the Supplier. The Supplier shall not be entitled to include any uplift for risks or contingencies within its day rates.
- 3.2 The Rate Card applies to Additional Services only.
- 3.3 The Authority shall request the Supplier to provide a quote for any Additional Services required. The Supplier shall provide a written quote to the Authority for written approval by the Authority prior to the commencement of any Additional Services.
- 3.4 The Supplier shall keep records of the Man Days properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice.
- 3.5 The Standard Rate Charges set out in section 3(b) of Appendix 1 shall be used to calculate the Fixed Prices due to the Supplier for Additional Development. The Supplier shall not be entitled to include any uplift for risks or contingencies within its Standard Rate Charges.
- 3.6 The Standard Rate Charges apply to Additional Development Services only.
- 3.7 The Authority shall request the Supplier to provide a quote for any Additional Development required. The Supplier shall provide a written quote to the Authority for written approval by the Authority prior to the commencement of any Additional Development.
- 3.8 The Authority's request for quote and subsequent Work Order shall include a specification of the Additional Development required and Acceptance Criteria to meet to initiate an Additional Milestone payment. The Acceptance Criteria shall have the meaning of the quality criteria the Supplier is required to fulfil before any payment is made to the Supplier for the Additional Development rendered.
- 3.9 Charges calculated by reference to a Time Service Charge mechanism shall not be subject to increase by way of Indexation.

4. FIXED PRICE MILESTONE PAYMENTS

- 4.1 The Fixed Price Milestone Payments set out in Appendix 1, shall be used to calculate the Fixed Price Milestone Payments due to the Supplier. The Supplier shall not be entitled to include any uplift for risks or contingencies unless the Supplier can demonstrate any incurred costs were caused by the Authority in accordance with paragraph 8.
- 4.2 The Service Charge (excluding any Time Service Charge) shall be calculated by reference to the enterprise pricing at Table 2 of Appendix 1.
- 4.3 Where Appendix 1 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Appendix 1.
- 4.4 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

5. VOLUME BASED SERVICE CHARGES

- 5.1 Not used.

6. REIMBURSABLE EXPENSES

6.1 Where:-

6.1.1 Services are to be charged using the Time pricing mechanism; and

6.1.2 the Authority so agrees in writing, the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are reasonable and supported by Supporting Documentation.

6.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request. The Supplier shall adhere to the Authorities expenses policy.

6.3 Except as expressly set out in paragraph 6.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement 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:-

6.3.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

6.3.2 any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

7. PAYMENT OF THE IMPLEMENTATION CHARGES

7.1 Notwithstanding anything to the contrary within this Agreement, the Authority shall not be obliged to pay the Implementation Charges unless and until the Supplier has implemented the Overarching Reporting Requirements defined in the Implementation Plan in accordance with this Agreement. The Supplier shall use all reasonable endeavours to implement the Overarching Reporting Requirements by 31 July 2023.

OFFICIAL

PART B – [NOT USED]

PART C

ADJUSTMENTS TO THE CHARGES

8. PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE

8.1 If the Supplier is entitled in accordance with Clause 27 (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date [as agreed with the Authority], then, subject always to Clause 24 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:-

8.1.1 the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:-

(a) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and

(b) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 27.1 (*Authority Cause*),

8.2 The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

9. SERVICE CREDITS

9.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

9.2 For each Service Period:-

9.2.1 the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a five (5) % deduction in the Service Charges; and

9.2.2 the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:-

$$SC = TSP \times AC$$

where:-

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is 5% per Service Point; and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

9.3 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

9.4 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

9.5 Service Credits shall never exceed the total value of Charges due in the relevant Service Period.

10. **CHANGES TO CHARGES**

- 10.1 Any Changes to the Charges (including the introduction of any new Charges) shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*).
- 10.2 The Authority may request that an impact assessment presents Charges without Indexation for the purposes of comparison.

11. **INDEXATION**

- 11.1 Any amounts or sums in this Agreement which are expressed to be "subject to Indexation" shall be adjusted in accordance with the provisions of this paragraphs **Error! Reference source not found.** and 5.1 to reflect the effects of inflation.
- 11.2 Where Indexation applies, the relevant adjustment shall be:-
- 11.2.1 applied on the first day of the fourth April following the Effective Date and on the first day of sixth April (each such date an "**adjustment date**"); and
- 11.2.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) months ended on the 31 January immediately preceding the relevant adjustment date.
- 11.3 Except as set out in this paragraphs **Error! Reference source not found.** and 5.1, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

OFFICIAL

PART D – [NOT USED]

PART E

INVOICING AND PAYMENT TERMS

12. SUPPLIER INVOICES

- 12.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 12.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard, the Supplier shall comply with the requirements of the Authority's e-invoicing system. In the alternative, the Supplier shall:-
- 12.2.1 prepare and provide to the Authority for approval of the format a template invoice within ten (10) Working Days of the Effective Date which shall include, as a minimum, the details set out in paragraph 12.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - 12.2.2 make such amendments as may be reasonably required by the Authority if the template invoice outlined in paragraph 12.3 is not approved by the Authority.
- 12.3 The Supplier shall ensure that each invoice contains the following information:-
- 12.3.1 the date of the invoice;
 - 12.3.2 a unique invoice number;
 - 12.3.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 12.3.4 the correct reference for this Agreement;
 - 12.3.5 the correct reference number of the purchase order to which it relates (if any);
 - 12.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were provided;
 - 12.3.7 a description of the Services;
 - 12.3.8 the pricing mechanism used to calculate the Charges (such a, Fixed Price, Time etc);
 - 12.3.9 any payments due in respect of a Milestone;
 - 12.3.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 12.3.11 details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;
 - 12.3.12 reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
 - 12.3.13 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;

OFFICIAL

12.3.14 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and

12.3.15 where the Services have been structured into separate Service lines, the information at paragraph 12.3.1 to **Error! Reference source not found.** (inclusive) shall be broken down in each invoice per Service line.

12.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice and Supporting Documentation setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

12.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

12.6 The Supplier shall submit all agreed invoices to the Authority electronically by emailing:-

apqueries@nda.gov.uk

with a copy to such other person and at such place as the Authority may notify to the Supplier from time to time.

12.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

12.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part 5. Where any invoice does not conform to the Authority's requirements set out in this Part 5, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

12.9 If the Authority fails to consider and verify an invoice in accordance with paragraphs 12.4 and 12.8, the invoice shall be regarded as valid and undisputed after a reasonable time has passed.

12.10 The Supplier shall ensure that all Supplier invoices do not reference any terms and conditions other than this Agreement. Where a Supplier invoice references any other terms and conditions, such Supplier invoice will not be valid and the Supplier shall promptly issue a replacement invoice which complies with this requirement.

13. PAYMENT TERMS

13.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.

13.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

OFFICIAL

APPENDIX 1

PRICING MECHANISM – IMPLEMENTATION AND LICENSING

[REDACTED]

SCHEDULE 7.2

PAYMENTS ON TERMINATION

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

1. **DEFINITIONS**

- 1.1 In this Schedule, the definitions set out in Schedule 1 shall apply.

2. **TERMINATION PAYMENT**

The termination payment payable pursuant to Clause 30.3 (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment (the "**Termination Payment**").

3. **BREAKAGE COSTS PAYMENT**

- 3.1 The Supplier may be entitled to recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:-

- 3.1.1 would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- 3.1.2 are unavoidable, proven, reasonable, and not capable of recovery;
- 3.1.3 are incurred under arrangements or agreements that are directly associated with this Agreement;
- 3.1.4 are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- 3.1.5 relate directly to the termination of the Services;
- 3.1.6 is not due to the occurrence of any Supplier Termination Event defined in Schedule 1.

4. **LIMITATION ON TERMINATION PAYMENT**

- 4.1 Subject to paragraph 4.3, the Termination Payment shall not exceed the lower of:

- 4.1.1 the aggregate of the relevant limits set out in Appendix 1 for the Breakage Costs Payment and the Unrecovered Payment; and
- 4.1.2 100% of the estimate of the Termination Payment set out in any relevant Termination Estimate.

- 4.2 The Breakage Costs Payment shall not exceed the lower of:-

- 4.2.1 the relevant limit set out in 0; and
- 4.2.2 100% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

- 4.3 The Unrecovered Payment shall not exceed the lowest of:-

- 4.3.1 the relevant limit set out in 0;
- 4.3.2 100% of the estimate of the Unrecovered Payment set out in any relevant Termination Estimate; and
- 4.3.3 the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

5. **MITIGATION OF THE TERMINATION PAYMENT**

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate the Termination Payment .

6. **FULL AND FINAL SETTLEMENT**

Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 29.1.1 (*Termination by the Authority*) and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

7. **INVOICING FOR THE PAYMENTS ON TERMINATION**

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7.1 (*Charges and Invoicing*).

8. **SET OFF**

9. **NO DOUBLE RECOVERY**

10. **ESTIMATE OF TERMINATION PAYMENT**

- 10.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

- 10.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:-

10.2.1 be based on the relevant amounts set out in the Financial Model;

10.2.2 include:-

- (a) details of the mechanism by which the Termination Payment is calculated;
- (b) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
- (c) such information as the Authority may reasonably require;

10.2.3 full particulars of the estimated Unrecovered Payment and appropriate supporting documentation;] and

10.2.4 state the period for which that Termination Estimate remains valid, which shall be not less than sixty (60) Working Days.

- 10.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

- 10.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

APPENDIX 1**MAXIMUM PAYMENTS ON TERMINATION**

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:-

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment
Anytime in the first Contract Year	One month's contract value = Annual Contract Value divided by twelve (12)	One and a half (1.5) years' Annual Contract Value
Anytime in the second Contract Year	Plus,	One (1) year's Annual Contract Value
Anytime after the third Contract Year	Any unpaid Service Charges due issue.	Six months (6) Annual Contract Value

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

I. **DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

1. **FINANCIAL TRANSPARENCY OBJECTIVES**

- 1.1 The Supplier shall collaborate with the Authority to achieve the following objectives:-

Agreeing the impact of Change

- 1.1.1 for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- 1.1.2 for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- 1.1.3 for the Parties to challenge each other with ideas for efficiency and improvements;
- 1.1.4 to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices, and

(together the "**Financial Transparency Objectives**")

2. **AUDIT RIGHTS**

- 2.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term upon 30 days notice to the Supplier to assess compliance by the Supplier of the Supplier's obligations under this Agreement, including for the following purposes:-

- 2.1.1 to review the Supplier's activities in connection with, and performance in respect of, this Agreement (including the IT Environment (or any part of it) and the wider service delivery environment (or any part of it)) and to verify the Supplier's compliance with this Agreement and applicable Law (including the Data Protection Legislation);
- 2.1.2 to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges, which shall include the verification of any supporting documentation in respect of such Charges;
- 2.1.3 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes, any circumstances which may impact upon the financial stability of the Supplier and/or any of the Supplier Group and their ability to provide the Services 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;
- 2.1.4 to obtain such information as is strictly 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;
- 2.1.5 to review all information required to be kept by the Supplier pursuant to this Agreement;
- 2.1.6 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- 2.1.7 to review the integrity, confidentiality and security of the information required to be kept by the Supplier pursuant to this Agreement (including the Authority Data); and

2.1.8 to 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.

2.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier more than once in any Contract Year..

2.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier for the purposes of and pursuant to applicable Law.

3. CONDUCT OF AUDITS

3.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

3.2 Subject to the Supplier's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:-

3.2.1 all information requested by the Authority within the permitted scope of the audit; and

3.2.2 reasonable access to any Sites, the Supplier System, Supplier Personnel and to any equipment used (whether exclusively or non-exclusively) in the provision of the Services;

3.3 Where appropriate, the Authority shall discuss the outcome of the audit with the Supplier. In such circumstances, the Supplier shall maintain records of the findings together with details of any corrective action taken as a result of such findings.

3.4 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 3, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

4. RESPONSE TO AUDITS

4.1 If an audit undertaken pursuant to paragraph 2 identifies that:-

4.1.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;

4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;

4.1.3 the Authority has overpaid any Charges, the Supplier shall pay to the Authority:-

(a) the amount overpaid (excluding any interest on the amount overpaid incurred in accordance with the terms of this Agreement); and

(b) the reasonable costs incurred by the Authority in undertaking the audit and the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

4.1.4 the Authority has underpaid any Charges, subject to the terms of payment set out in this Agreement, the Authority shall pay to the Supplier the amount underpaid as identified in the audit report and on provision by the Supplier of all reasonable evidence required by the

OFFICIAL

Authority in connection to such underpaid amount (excluding any interest that may have accrued up to the date of payment).

OFFICIAL

SCHEDULE 8.1

GOVERNANCE

Issue No:	Summary of Change:
V0.1	Version for issue with ITT
V0.2	Update to simplify process

I. DEFINITIONS

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.

1. MANAGEMENT OF THE SERVICES

- 1.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed on a day-to-day basis.
- 1.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.
- 1.3 The project managers appointed in paragraph 1.1 shall meet as and when required by the Authority to assure the Authority that the Services are delivered in line with this Agreement.

2. CONTRACT MANAGEMENT MECHANISMS

- 2.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 2.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:-
 - 2.2.1 the identification and management of risks;
 - 2.2.2 the identification and management of issues; and
 - 2.2.3 monitoring and controlling project plans.
- 2.3 The Risk Register shall be updated by the Supplier and submitted for review at Service, System Management and Performance Review Meetings.

3. SERVICE, SYSTEM MANAGEMENT AND PERFORMANCE REVIEW MEETINGS

- 3.1 A monthly review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 3.2 The meetings shall be attended by the Account Manager of the Supplier and the *Contract Manager* of the Authority and any other persons considered necessary by the Authority or Supplier for the review.
- 3.3 The review meeting shall consider:
 - 3.3.1 performance against the requirements of the contract including, but not limited to:-
 - (a) the Milestones as defined in Schedule 6.1 (*Implementation Plan*),
 - (b) Key Performance Indicators as defined in Schedule 2.2 (*Performance Levels*) and risk management; and
 - (c) any Service Credits payable by the Supplier to the Authority.
 - 3.3.2 the overall operational performance of the System;
 - 3.3.3 any risks, issues or concerns either of the Parties have with the System, relationship or Agreement.

OFFICIAL

- 3.4 The review of performance shall review Supplier performance for the previous Service Period and agree any Service Charges payable without prejudice to Schedule 7.1 (*Charges and Invoicing*).

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE – NOT USED

Issue No:	Summary of Change:
V0.1	Version for issue with ITT
V0.2	Update to simplify

OFFICIAL

OFFICIAL

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

1. DEFINITIONS

1.1 In this Schedule, the definitions set out in Schedule 1 shall apply.

2. DISPUTE NOTICES

2.1 If a Dispute between the Authority and the Supplier arises then:-

2.1.1 the Authority Representative 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 period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 If a Dispute between a Service Recipient and the Supplier arises then:-

2.2.1 The Service Recipient or Supplier will raise their concerns with the Authority, who will engage with the Supplier and Service Recipient separately and attempt to resolve the Dispute;

2.2.2 If the Authority is unable to resolve the Dispute within twenty (20) Working Days then the Authority Representative, Supplier Representative and a representative of the Service Recipient shall meet and attempt in good faith to resolve the Dispute; and

2.2.3 if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, then the Authority, on behalf of the Service Recipient, or Supplier may issue to the other a Dispute Notice.

2.3 A Dispute Notice:-

2.3.1 shall set out:-

(a) the material particulars of the Dispute;

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

(c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

2.3.2 may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.4 shall apply.

2.4 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to paragraph 2.3.2, then:-

2.4.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

2.4.2 if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of paragraph 9 shall apply.

OFFICIAL

- 2.5 Subject to paragraphs 2.6 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties (and any Service Recipients) shall seek to resolve the Dispute:-
- 2.5.1 first by commercial negotiation (as prescribed in paragraph 4);
 - 2.5.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in paragraph 5); and
 - 2.5.3 lastly by recourse to litigation (in accordance with Clause 42 (*Governing Law and Jurisdiction*)).
- 2.6 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.
- 2.7 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under paragraph 9.

3. EXPEDITED DISPUTE TIMETABLE

- 3.1 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 the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:-
- 3.2.1 in paragraph 4.2.3), ten (10) Working Days;
 - 3.2.2 in paragraph 5.2, ten (10) Working Days; and
 - 3.2.3 in paragraph 6.2, five (5) Working Days.
- 3.3 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. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (2) Working Days in the case of paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4. COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Group Commercial Director and the Supplier's Managing Director. Where the Dispute involves a Service Recipient they may also, at the Authority's sole discretion, send a representative to engage in commercial negotiations.

4.2 If:-

- 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- 4.2.2 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 negotiation in accordance with this paragraph 4; or
- 4.2.3 the Parties have not settled the Dispute in accordance with paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with paragraph 5 (a "**Mediation Notice**").

5. **MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties (including any Service Recipients who are party to the Dispute) shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both 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.
- 5.4 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 Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6. **EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any:
 - 6.1.1 aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT nature; or
 - 6.1.2 accounting or financing matters,and the Dispute has not been resolved by commercial negotiation in accordance with paragraph 4 or, if applicable, mediation in accordance with paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an Expert for determination.
- 6.2 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 of the relevant request made pursuant to paragraph 6.1, or if the person appointed is unable or unwilling to act, the Expert shall be appointed:-
 - 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

- 6.2.2 if the Dispute relates to a matter of an accounting or financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- 6.2.3 if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:-
- (a) an appropriate body agreed between the Parties; or
 - (b) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the [President of the Law Society] on application by either Party.

6.3 The Expert shall act on the following basis:-

- 6.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 6.3.3 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;
- 6.3.4 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;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. **[NOT USED]**

8. **URGENT RELIEF**

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

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

9. **MULTI-PARTY DISPUTES**

- 9.1 All Multi--Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the "**Multi--Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi--Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi--Party Dispute and specifies the Related Third Parties which are to be involved in the Multi--Party Dispute Resolution Procedure, such notice a "**Multi--Party Procedure Initiation Notice**".

- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:-
- 9.4.1 a Multi--Party Dispute, in which case the Authority shall serve a Multi--Party Procedure Initiation Notice on the Supplier; or
- 9.4.2 not a Multi--Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi--Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi--Party Procedure Initiation Notice a Multi--Party Dispute shall be dealt with by a board (in relation to such Multi--Party Dispute, the "**Multi--Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi--Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi--Party Dispute:-
- 9.6.1 the Authority;
- 9.6.2 the Supplier;
- 9.6.3 each Related Third Party involved in the Multi-Party Dispute;
- 9.6.4 (to the extent different from paragraph 9.6.3 above) any Service Recipient affected by the Multi-Party Dispute; and
- 9.6.5 any other representatives of any of the Parties, any Related Third Parties or Service Recipients whom the Authority considers necessary,
- (together "**Multi--Party Dispute Representatives**").
- 9.7 The Parties agree that the Multi--Party Dispute Resolution Board shall seek to resolve the relevant Multi--Party Dispute in accordance with the following principles and procedures:-
- 9.7.1 the Parties shall procure that their Multi--Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi--Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi--Party Dispute Resolution Board in respect of the Multi--Party Dispute;
- 9.7.2 the Multi--Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi--Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi--Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- 9.7.3 in seeking to resolve or settle any Multi--Party Dispute, the members of the Multi--Party Dispute Resolution Board shall have regard to the principle that a Multi--Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi--Party Dispute.

OFFICIAL

9.8 If a Multi--Party Dispute is not resolved between the Parties and all Related Third Parties within twenty-five (25) Working Days of the issue of the Multi--Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:-

9.8.1 either Party may serve a Mediation Notice in respect of the Multi--Party Dispute in which case paragraph 5 shall apply; and/or

9.8.2 either Party may request that the Multi--Party Dispute is referred to an Expert in which case paragraph 6 shall apply,

and in each case references to the "**Supplier**" or the "**Parties**" in such provisions shall include a reference to all Related Third Parties.

SCHEDULE 8.4

REPORTS AND RECORDS PROVISIONS

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

I. **DEFINITIONS**

- i. In this Schedule, the definitions set out in Schedule 1 shall apply.-

1. **REPORTS**

The Authority may require any or all of the following reports:-

- 1.1 delay reports;
- 1.2 reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- 1.3 reports which the Supplier is required to supply as part of the Management Information;
- 1.4 annual reports on the Insurances;
- 1.5 security reports; and
- 1.6 Force Majeure Event reports.

2. **RECORDS**

- 2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in paragraph **Error! Reference source not found.** and 0 (together "**Records**"):-
 - 2.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
 - 2.1.2 in chronological order;
 - 2.1.3 in a form that is capable of audit; and
 - 2.1.4 at its own expense.
- 2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 2.4 The Supplier shall, during the Term and for a period of at least seven (7) years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this Agreement.

OFFICIAL

APPENDIX 1

TRANSPARENCY REPORTS – [NOT USED]

APPENDIX 2

RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:-

1. this Agreement, its Schedules and all amendments to such documents;
2. all other documents which this Agreement expressly requires to be prepared;
3. documents prepared by the Supplier in support of Performance Levels;
4. records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel;
5. notices, reports and other documentation submitted by any Expert;
6. all operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment;
7. documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event;
8. all formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services;
9. all certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services;
10. documents prepared by the Supplier in support of claims for the Charges;
11. documents submitted by the Supplier pursuant to the Change Control Procedure;
12. documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure;
13. documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest;
14. invoices and records related to VAT sought to be recovered by the Supplier;
15. financial records,;
16. records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents;
17. all documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them;
18. all journals and audit trail data referred to in Schedule 2.4 (*Security Management Plan*); and
19. all other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

OFFICIAL

APPENDIX 3

RECORDS TO UPLOAD TO VIRTUAL LIBRARY – [NOT USED]

OFFICIAL

APPENDIX 4

SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE – [NOT USED]

SCHEDULE 8.5

EXIT MANAGEMENT

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

DEFINITIONS

- i. In this Schedule, the definitions set out in Schedule 1 (*Definitions*) shall apply.

EXIT PLAN

[Redacted]

.

SCHEDULE 8.6

SERVICE CONTINUITY PLAN

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

PART 1

SERVICE CONTINUITY PLAN

DEFINITIONS

In this Schedule, the definitions set out in Schedule 1 shall apply.

1. SERVICE CONTINUITY PLAN

1.1 The initial version of the Service Continuity Plan as at the Effective Date is set out at Appendix 1 of Part 1 to this Schedule 8.6 (*Service Continuity Plan*). The Service Continuity Plan details the processes and arrangements that the Supplier shall follow to:-

1.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any subcontractor and/or any Supplier Group member); and

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

1.1.3 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.

2. TESTING OF THE SERVICE CONTINUITY PLAN

2.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph **Error! Reference source not found.**, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the provision of the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

2.2 If the Authority requires an additional test of the Service Continuity 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 Service Continuity Plan. The Supplier's costs of the additional test (as agreed in advance with the Authority) shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

2.3 The Supplier shall undertake and manage testing of the Service Continuity 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.

2.4 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.

2.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:-

2.5.1 the outcome of the test;

2.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and

2.5.3 the Supplier's proposals for remedying any such failures.

2.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity 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.

2.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

2.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the provision of the Services or as otherwise reasonably requested by the Authority.

3. INVOCATION OF THE SERVICE CONTINUITY PLAN

3.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan (and shall inform the Authority promptly of such invocation). In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.

3.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:-

3.2.1 where an Insolvency Event of a subcontractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or

3.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

APPENDIX 1

Service Continuity Plan



Appendix.2_ Business
Continuity Plan _Think

PART 2

CORPORATE RESOLUTION PLANNING

1. SERVICE STATUS AND SUPPLIER STATUS

- 1.1 This Agreement is a Critical Service Contract.

2. PROVISION OF CORPORATE RESOLUTION PLANNING INFORMATION

- 2.1 The Supplier shall provide to the Relevant Authority the CRP Information within thirty (30) calendar days of the date of the Relevant Authority's request.

- 2.2 The Supplier shall ensure that the CRP Information:-

2.2.1 is full, comprehensive, accurate and up to date;

2.2.2 is split into two parts:-

- (a) Group Structure Information and Resolution Commentary; and
(b) UK Public Service / CNI Contract Information

and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

2.2.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority to understand and consider the information for approval;

2.2.4 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

2.2.5 complies with the requirements set out at 0 (Group Structure Information and Resolution Commentary) and 0

(UK Public Sector / CNI Contract Information) respectively.

- 2.3 Following receipt by the Relevant Authority of the CRP Information pursuant to paragraph **Error! Reference source not found.** and if requested by the Relevant Authority (acting reasonably), the Supplier and the Relevant Authority shall meet to discuss in good faith the contents of the CRP Information and the impacts (if any) on the Services.

3. TERMINATION RIGHTS

- 3.1 The Authority shall be entitled to terminate this Agreement if the Supplier is required to provide CRP Information under paragraph 2 of this **Error! Reference source not found.**:
 - 3.1.1 the Supplier fails to provide the CRP Information within thirty (30) calendar days of a request from the Authority.

APPENDIX 2

GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY

1. The Supplier shall:-
 - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix 2 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix 2 and the dependencies between each.

APPENDIX 3

UK PUBLIC SECTOR / CNI CONTRACT INFORMATION

1. The Supplier shall:-
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:-
 - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms--length bodies and agencies, non--departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1 of this 0 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI.

OFFICIAL

SCHEDULE 8.7

CONDUCT OF CLAIMS

Issue No:	Summary of Change:
V0.1	Initial version

1. INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a party (including Service Recipients) or any other party from whom an indemnity is sought under this Agreement (the "**Indemnifier**"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "**Beneficiary**").
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to paragraph **Error! Reference source not found.**, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to paragraph **Error! Reference source not found.**, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to paragraph **Error! Reference source not found.**:-
- 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
- 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 **RECOVERY OF SUMS**
- If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:-
- 1.5.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 1.5.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

2. MITIGATION

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

OFFICIAL

SCHEDULE 9

STAFF TRANSFER

Issue No:	Summary of Change:
V0.1	Version for issue with ITT

1. **DEFINITIONS**

In this Schedule, the definitions set out in Schedule 1 shall apply.-

2. **INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A [NOT USED]

PART B [NOT USED]

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

3. **PROCEDURE IN THE EVENT OF TRANSFER**

3.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

3.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:-

3.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and

3.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

3.3 If an offer referred to in paragraph 3.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

3.4 If by the end of the fifteenth (15) Working Day period specified in paragraph 3.2.2:-

3.4.1 no such offer of employment has been made;

3.4.2 such offer has been made but not accepted; or

3.4.3 the situation has not otherwise been resolved,

the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

4. INDEMNITIES

- 4.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of paragraphs 3.1 to 3.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 3.1 **Error! Reference source not found.**, the Authority shall:-
- 4.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in paragraph 3.2 made pursuant to the provisions of paragraph 3.4 provided that the Supplier takes all reasonable steps to minimise any such Employee Liabilities; and
- 4.1.2 procure that the Former Supplier indemnifies the Supplier against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in paragraph 3.2 made pursuant to the provisions of paragraph 3.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 4.2 If any such person as is described in paragraph 3.2 is neither re-employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the fifteenth (15) Working Day period referred to in paragraph 3.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 4.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to paragraph 4, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 4.4 The indemnities in paragraph 4.1 **Error! Reference source not found.**:-
- 4.4.1 shall not apply to:-
- (a) any claim for:-
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 4.4.2 shall apply only where the notification referred to in paragraph 3.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

PART D [NOT USED]

PART E

EMPLOYMENT EXIT PROVISIONS

5. APPLICATION OF TUPE

- 5.1 Whilst as at the date of this Agreement neither Party anticipates that the Employment Regulations will be applicable, the parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason, there could be a relevant transfer of some or all of the Supplier Personnel to the Authority, a Service Recipient and/or the Replacement Supplier for the purposes of Employment Regulations .
- 5.2 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of the Employment Regulations, the Supplier shall fully co-operate with and assist the Authority in determining which Supplier Personnel may transfer.

6. TUPE OBLIGATIONS

- 6.1 Where the Parties agree the Employment Regulations apply, or the Authority reasonably believes that the Employment Regulations may apply, the provisions of this paragraph 6 shall have effect.
- 6.2 The Supplier shall as and when required during the Term, to the extent lawfully permitted, provide the Authority with the following details:
- 6.2.1 Full details of those Supplier Personnel engaged in the Services;
 - 6.2.2 copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of the Transferring Supplier Employees);
 - 6.2.3 all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Transferring Supplier Employees; and
 - 6.2.4 information on any collective agreements which will have effect in relation to the Transferring Supplier Employees.
- 6.3 The Supplier shall provide updates of the details listed above at regular intervals to be specified by the Authority, which shall be complete and accurate in all material respects.

7. INDEMNITY

- 7.1 The Supplier shall indemnify the Authority and any relevant Service Recipient against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Authority, any Service Recipient and/or a Replacement Supplier in connection with or as a result of:
- 7.1.1 Any claim or demand by any Transferring Supplier Employees or a trade union or other body or person representing a Transferring Supplier Employees (whether in contract, tort, under statute, pursuant to law or otherwise) arising from any act, fault or omission of the Supplier on or before the Termination Date;
 - 7.1.2 any failure by the Supplier to comply with its obligations under regulations 13 and 14 of the Employment Regulations, or any award of compensation under regulation 15 of the Employment Regulations, save where such failure arises from the failure of the Authority, the Service Recipient and/or Replacement Supplier to comply with its or their duties under regulation 13 of the Employment Regulations;
 - 7.1.3 the provision of inaccurate or incomplete information pursuant to this clause Schedule 9;

OFFICIAL

- 7.1.4 a claim by any person who transfers or alleges that they have transferred to the Authority, Service Recipient or the Replacement Supplier but whose name is not included in the list of Transferring Supplier Employees.